CLERK'S OFFICE 1398

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, ~~1901~~ 1902.

No. ~~822~~ 106.

CORNELIUS K. G. BILLINGS AND ALBERT M. BILLINGS RUDDOCK, PLAINTIFFS IN ERROR,

vs.

THE PEOPLE OF THE STATE OF ILLINOIS.

IN ERROR TO THE SUPREME COURT OF THE STATE OF ILLINOIS.

FILED MAY 23, 1901.

(18,178.)

(18,178.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1901.

No. 332

CORNELIUS K. G. BILLINGS AND ALBERT M. BILLINGS RUDDOCK, PLAINTIFFS IN ERROR,

vs.

THE PEOPLE OF THE STATE OF ILLINOIS.

IN ERROR TO THE SUPREME COURT OF THE STATE OF ILLINOIS.

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a UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the supreme court of the State of Illinois, Greeting:

Because in the record and proceedings, as also in the rendition of a judgment of a plea which is in the said supreme court, before you or some of you, being the highest court of law of the said State of Illinois in which a decision could be had in the said suit between Cornelius K. G. Billings and Albert M. Billings Ruddock and The People of the State of Illinois, wherein was drawn in question the validity of a statute of or authority exercised under said statute on the ground of their being repugnant to the Constitution and laws of the United States and the decision was in favor of said their validity, and wherein was drawn in question the validity of a statute of the State of Illinois because the proceeding had and taken thereunder against the said Cornelius K. G. Billings and the said Albert M. Billings Ruddock was a taking of private property without due process of law and was a denial of the equal protection of the laws and repugnant to the Constitution of the United States of America, and the decision was against the right, privilege, or exemption specially set up or claimed under such Constitution of the United States of America, a manifest error hath happened, to the great damage of the said Cornelius K. G Billings and the said Albert M. Billings Ruddock, as by their complaint appears, we, being willing that error, if any hath been done, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme
b Court of the United States, together with this writ, so that you have the same in the said Supreme Court, at Washington, within thirty days from the date hereof, that, the record and proceedings aforesaid being inspected, said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

The Seal of the Circuit Court of the United States for the South'n Dist. Ill.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the ninth day of April, in the year of our Lord one thousand nine hundred and one.

JAMES T. JONES,
Clerk of the United States Circuit Court
for the Southern District of Illinois.

Allowed, to operate as a supersedeas, by—
CARROLL C. BOGGS,
Chief Justice of the Supreme Court
of the State of Illinois.

c In the Supreme Court of Illinois.

CORNELIUS K. G. BILLINGS, ALBERT M. Billings Ruddock *vs.* THE PEOPLE OF THE STATE OF ILLINOIS.	Appeal from County Court, Cook.

I, Christopher Mamer, clerk of the supreme court, do hereby certify that on the ninth day of April, in the year of our Lord one thousand nine hundred and one, a copy of the foregoing writ of error for the defendants in error was lodged in my office, at Springfield, Illinois.

Witness my hand and the seal of said supreme court, at Springfield, Illinois, this twenty-third day of April, A. D. 1901.

[Seal of the Supreme Court, State of Illinois, Aug. 23, 1818.]

CHRISTOPHER MAMER,
Clerk of Supreme Court.

{ Ten-cent United States internal revenue stamp, canceled Apr. 23, 1901. C. M. }

d UNITED STATES OF AMERICA, *ss:*

The President of the United States to the People of the State of Illinois, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date hereof, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Illinois, wherein Cornelius K. G. Billings and Albert M. Billings Ruddock are plaintiffs in error and The People of the State of Illinois are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiffs in error, as in said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Carroll C. Boggs, chief justice of the supreme court of the State of Illinois, this 20th day of April, in the year of our Lord one thousand nine hundred and one.

CARROLL C. BOGGS,
Chief Justice of the Supreme Court of the State of Illinois.

Received a true copy of the within citation this 23rd day April, A. D. 1901.

H. J. HAMLIN, *Att'y Gen'l.*

e In the Supreme Court of Illinois.

CORNELIUS K. G. BILLINGS, ALBERT M. Billings Ruddock *vs.* THE PEOPLE OF THE STATE OF ILLINOIS.	Appeal from County Court, Cook.

I, Christopher Mamer, clerk of the supreme court, do hereby certify that on the twenty-third day of April, in the year of our Lord one thousand nine hundred and one, a copy of the foregoing citation was lodged in my office, at Springfield, Illinois.

Witness my hand and the seal of said supreme court, at Springfield, Illinois, this twenty-third day of April, A. D. 1901.

[Seal of the Supreme Court, State of Illinois, Aug. 23, 1818.]

CHRISTOPHER MAMER,
Clerk of Supreme Court.

{Ten cent United States internal-revenue stamp, canceled Apr. 23, 1901. C. M.}

f In the Supreme Court of Illinois.

CORNELIUS K. G. BILLINGS, ALBERT M. Billings Ruddock *vs.* THE PEOPLE OF THE STATE OF ILLINOIS.	Appeal from County Court, Cook.

I, Christopher Mamer, clerk of the supreme court of Illinois for the northern grand division and keeper of the records and files thereof, by virtue of the foregoing writ of error and in obedience thereto, do hereby certify that the following pages, numbered from one (1) to two hundred and seven (207), inclusive, contain a true and complete transcript and copy of the record and proceedings had in said court in the case which is above entitled and the whole thereof, including the opinion of the court, as the same remain of record and on file in my said office.

In testimony whereof I have hereunto set my hand and caused the seal of said supreme court of Illinois to be hereunto affixed, at Springfield, this twenty-third day of April, in the year of our Lord one thousand nine hundred and one.

[Seal of the Supreme Court, State of Illinois, Aug. 23, 1818.]

CHRISTOPHER MAMER,
Clerk of Supreme Court.

{Ten-cent United States internal-revenue stamp, canceled Apr. 23, 1901. C. M.}

1 At a supreme court begun and held at Springfield on Tuesday, the fourth day of December, in the year of our Lord one thousand eight hundred and ninety-nine, within and for the State of Illinois.

Present: James H. Cartwright, chief justice; Alfred M. Craig, justice; Benjamin D. Magruder, justice; Jacob W. Wilkin, justice; Jesse J. Phillips, justice; Joseph N. Carter, justice; Carroll C. Boggs, justice; Edward C. Akin, attorney general; Charles M. Woods, sheriff.

Attest: CHRISTOPHER MAMER, *Clerk.*

Be it remembered that afterwards, to wit, on the sixth day of December, A. D. 1899, there was filed in the office of the clerk of said court a certain transcript of the record and proceedings of the county court of Cook county; which said transcript is in the words and figures following, viz:

2 UNITED STATES OF AMERICA:

STATE OF ILLINOIS, } ss:
County of Cook, }

Pleas before the Honorable Orrin N. Carter, county judge and judge of the county court of Cook county, in the State of Illinois, sitting as county judge and holding the county court of said county, at a regular term of said county court of Cook county, begun and holden at the court-house, in the city of Chicago, in said county and State, on the second Monday, being the 9th day, of October, in the year of our Lord one thousand eight hundred and ninety-nine, and of the Independence of the United States of America the one hundred and twenty-third.

Present: The Honorable Orrin N. Carter, judge of the county court of Cook county; Charles S. Deneen, State's attorney; Ernest J. Magerstadt, sheriff of Cook county.

Attest: PHILIP KNOPF, *County Clerk.*

Be it remembered that heretofore, to wit, on the 7th day of July, in the year of our Lord one thousand eight hundred and ninety-eight, Orrin N. Carter, county judge, then and there acting for and being in the county of Cook and State of Illinois, made a certain order appointing Howard E. Leach appraiser in the matter of the estate of Albert M. Billings, deceased; which said order is in the words and figures as follows, to wit:

STATE OF ILLINOIS, } ss.:
County of Cook, }

In the County Court of Cook County, November Term, A. D. 1897.

In the Matter of the Estate of ALBERT M. BILLINGS, Deceased.
Inheritance Tax.

3 It appearing that the right of succession to certain property of the estate of said deceased is subject to a tax under the provisions of the statutes of this State relating to the taxation of gifts, legacies, and inheritances in certain cases, now, in pursuance of said statutes in such case made and provided—

It is hereby ordered that Howard E. Leach, of the city of Chicago, in said county, be, and he is hereby, appointed appraiser herein for the purpose of fixing the fair market value of the property of which Albert M. Billings, late of the county of Cook, Illinois, died seized and possessed, subject to the payment of said tax, and that said appraiser, before entering upon the duties of his office, take and file an oath with the clerk of said court to faithfully and fairly perform the duties of such appraiser according to law and make a just and true report of his proceedings according to the best of his understanding.

It is further ordered that said appraiser give ten days' notice in writing by mail, postpaid, of the time and place he will proceed to appraise such property, to the treasurer of the county of Cook and to all persons known to have or claiming an interest in said property, and that thereupon, at such time and place, or at the time and place to which he may adjourn such proceedings, such appraiser shall ascertain and report the facts as to the relationship to said decendent of all persons having or claiming to have an interest in said estate, and as to the debts claimed or shown to exist and claims filed or allowed against said estate, together with the costs, expenses, and commissions of administering the same, as near as may be, and also all other facts and matters material to fix the clear cash value of all estates, annuities, life estates, and terms for years growing out of said estate, and to report the value and amount thereof and at what rate the same appears to be taxable under said statutes.

4 And it is further ordered that, for the purpose of such appraiser, said appraiser is hereby authorized to issue subpœnas for *to* and to compel the attendance of witnesses before him, and to take the evidence of such witnesses under oath concerning such property and the value thereof.

And it is further ordered that said appraiser proceed with all convenient speed to make a report in writing of such value and of his proceedings under this order to the county judge of said county of Cook, together with the depositions of the several witnesses examined by him.

And it is further ordered that said appraiser file therewith a statement, under oath, showing the number of days actually and neces-

sarily spent in making such appraisal and his actual and necessary traveling expenses, together with the fees of said witnesses.

ORRIN N. CARTER,
County Judge.

283. County court of Cook county. In the estate of Albert M. Billings, deceased. Inheritance tax. Order appointing appraiser. Filed Jul- 7, 1898. Philip Knopf, clerk.

And afterwards and on, to wit, the 7th day of July, A. D. 1898, there was filed in the office of the clerk of said court, in the matter of the estate of Albert M. Billings, deceased, the oath of Howard E. Leach, a- appraiser, as aforesaid, which is in the words and figures following, to wit:

5 STATE OF ILLINOIS, } ss:
County of Cook, }

In the County Court.

I, Howard E. Leach, appointed appraiser by order of the county court of the county of Cook, do hereby swear that I will faithfully and fairly perform the duties of such appraiser according to law, and make a just and true report of my proceedings, according to the best of my understanding.

HOWARD E. LEACH.

Subscribed and sw[illegible]a to before me this 6th day of July, 1898.
[NOTARIAL SEA[illegible]] SAMUEL FREIDLANDER,
Notary Public.

Endorsed: 283. County court of Cook county. In the matter of the estate of Albert M. Billings, deceased. Inheritance tax. Oath of appraiser. Filed Jul- 7, 1898. Philip Knopf, clerk.

And afterwards, to wit, on the 24th day of August, A. D. 1899, there was filed with the clerk of said court a certain appraiser's report in words and figures as follows, to wit:

Appraiser's Report.

In the County Court of Cook County.

STATE OF ILLINOIS, } ss:
Cook County, }

In the Matter of the Estate of ALBERT M. BILLINGS, Deceased. Inheritance Tax. Docket No. 283.

6 To the Honorable Orrin N. Carter, county judge:

I, the undersigned, who was, on the 7th day of July, 1898, appointed appraiser under and pursuant to the statutes of the State of Illinois relating to the taxation of gifts, legacies, and inheritances in certain cases, approved June 15, 1895, enforced July 1, 1895, to fix

the fair market value of the property of the estate of said Albert M. Billings, deceased, subject to taxation under said act, respectfully report as follows;

First. Forthwith after said appointment I gave notice by mail to all persons known to have or claim an interest in the property of said decedent subject to assessment, and to such persons as the county judge by order directed, of the time and place at which I would appraise said property.

Service of said notice is evidenced by an affidavit marked Exhibit "A," hereto attached and made a part hereof.

Second. At the time and place in said notice stated, to wit, at room 707, Security building, 188 Madison St., in the city of Chicago, Illinois, at the hour of 2 p. m. on the 22nd day of July, 1898, and thereafter from time to time, pursuant to adjournments regularly had, I proceeded to appraise all such property of the estate of said deceased subject to taxation under said act, and to take evidence in writing, under oath, of the several witnesses produced concerning said property and the fair market value thereof at the time of the death of said decedent; which depositions, so far as the same were taken, are hereto attached and made a part of this report, together with certain documentary evidence produced, marked Exhibit "B."

And from said appraisement and evidence I find that said decedent, Albert M. Billings, died seized of property subject to said inheritance tax, and that the fair market value of such property
7 of said estate at the time of said decedent's death, and of the several estates, legacies, and interests growing out of said estate and passing by reason of the death of said decedent, and the persons entitled therein as heirs, legatees, devisees, etc., *to be* as follows:

SCHEDULE I.

Estate of ALBERT M. BILLINGS, Deceased.

Date of decedent's death: February 7, 1897.
Residence of decedent: Chicago.
Property transferred by will: —.
Record of will: Book 25, page 142.
Date of letters: —.
Names, titles, and addresses of legal representatives, etc.:
Augusta S. Billings, 504 W. Lake St., executrix.
C. K. G. Billings, 470 Washington Blvd., executor.
Charles H. Ruddock, 468 " " executor.
Names of persons appearing at appraisement in behalf of estate:
James F. Meagher, Esq., att'y for the estate.
Robert L. Benson, Esq.

APPRAISER'S REPORT.

SCHEDULE II.

Inventory of Decedent's Estate.

Real property.		Items.	Fair market value.
1, 2, & 3		Lots 21, 22, 23, and 24, in block 1, in Union Park addition to Chicago	$50,000
8	4	Lots 1, 2, 3, and 4, in William L. Lee's subdivision of that part of lot 3, in the circuit court partition of the S. W. ¼ of sec. 8, 39, 14, east and adjoining bl'k 10, in the Union Park Second addition to Chicago, except the west 196.54 feet thereof	16,375
	5	That part of lot 3, in the circuit court partition of the S. W. ¼ of sec. 8, 39, 14, described as follows: Beginning at the northeast corner of lot 1, in block 10, Union Park Second addition to Chicago, and running thence south, along the east line of said lot 1, 108 feet to the center of a proposed alley 16 feet wide; thence east on a line parallel with the south line of Fulton street 100 feet; thence north on a line parallel with the west line of Sheldon street 108 feet to the south line of Fulton street; thence west along the south line of Fulton street 100 feet to the place of beginning.	
	6	Also lot 1, in block 10, in Union Park Second addition of Chicago	13,500
		Carried forward	79,875
9		Brought forward	79,875
	7	Part of the 52.95 acres set off to Henry Hubbard in the partition proceeding among the owners of the S. W. ¼ of section 8, 39, 14, and being part of lot 2 of assessor's division of part of lot 3, south of Lake street, in the circuit court partition of the S. W. ¼ of sec. 8, 39, 14, described as follows, to wit: Commencing at the northeast corner of said lot 2, running thence south on the east line of said lot 182½ feet to the alley; thence west on a north line of said alley 47.75 feet; thence north and parallel with the east line of said lot 182½ feet, more or less, to the south line of Lake street; thence east on the south line of Lake street to the place of beginning	7,000
	8	That part of the 52.95-acre tract set off to Henry Hubbard in partition among the owners of the S. W. ¼ of sec. 8, 39, 14, bounded as follows: Beginning on the south line of said tract at the southeast corner of the acre lot conveyed by William B. Ogden to W. F. Myrick Jan. 29, 1853; thence east along said south line 96 feet; thence north 6.57 chains; thence west 96 feet to W. F. Myrick's northeast corner; thence south 6.56 chains to the place of beginning	29,400
		Carried forward	116,275

Schedule II—Continued.

	Real property.	Items.	Fair market value.
10		Brought forward	116,275
	9	Commencing on the north line of Lake street 14.12½ chains (932.14 feet) east of the west line of the S. W. ¼ of sec. 8, 39, 14, thence east along said north line 1.52½ chains (100.54 feet); thence north 245 feet to the center line of a proposed alley (16 feet wide), which center line is to be 108 feet south of the south line of Fulton street; thence west along said center line parallel to Fulton street 1.52½ chains (100.54 feet); thence south 245 feet to place of beginning	20,500
	10 & 11	Lots 7 and 8, bl'k 1, Union Park addition to Chicago	7,190
	12	Lots 13 and 14, in bl'k 10, Union Park Second addition to Chicago	8,400
	13, 14, 15	Lot 2, in bl'k 54, Carpenter's addition to Chicago, and the east 20 feet of lot 3 and the west 20 feet of lot 3, in bl'k 54, said Carpenter's addition to Chicago	24,500
	16	Lots 5 and 6, in the subdivision of lots 1 to 7, and 18, in bl'k 3, Union Park addition to Chicago	30,000
		Lot 4, in same	16,000
	17	Lots 1 and 2 and the east 25 feet of lot 3, in bl'k 4, in Union Park addition to Chicago	23,000
	18 & 19	Lot 12 and the east 20 feet of lot 13, John H. Kedzie's subdivision of bl'k 58, in the Canal Trustees' subdivision of sec. 7, 39, 14	10,000
		Carried forward	255,865
11		Brought forward	$255,865
	20	Lot 6, in bl'k 2, in Duncan's addition to the city of Chicago	8,500
	21	Lot 2, bl'k 5, D. S. Lee's addition to Chicago	5,000
	22	Lot 12, in Fairlawn—family cemetery lot	000
	23	Lot 3, being the south 19 acres of the west half of the N. W. ¼ of sec. 18, 40, 14 (except streets)	47,500
	24	The S. ½ of bl'k 25 of Kinzie's addition to the city of Chicago, and—	
	25	Lot 1, in bl'k 16, in Wolcott's addition to the city of Chicago	40,000
	26	The N. ½ of E. ½ and the S. ½ of W. ½ of bl'k 73, in Canal Trustees' subdiv. of W. ½ of sec. 27, 39, 14	60,000
	27	Lot 1 (except the S. 28 feet thereof) and the E. 19 feet of lot 2 (except the S. 28 feet thereof), in Lesenbarth's resubdivision of lot 1 (except the E. 7 feet thereof); the S. 169.6 feet of lot 2, the E. 69 feet of the N. 136.6 feet of lot 2, and the E. 16 feet of the S. 169.6 feet of lot 3, in Lesenbarth's subd'n of lot 36 of the School Trustees' subd'n of sec. 16, 38, 14	14,000
		Carried forward	430,865
12		Brought forward	$430,865
		Interest in certificate of sale of the following-described real estate:	
		Lots 19, 25, 26, 27, 28, 29, and 37, bl'k 2, Ingham's sub'n of part of S. W. ¼, S. W. ¼, sec. 25, 40, 13.	
		N. 30 acres of S. 60 acres of E. ½ of S. E. ¼ of sec. 17, 40, 13; that part of S. E. ¼ of sec. 33, tp. 40, R. 13 E., 3 P. M.,	

Schedule II—Continued.

Real property.	Items.	Fair market value.
	described as follows: Commencing 445 feet east of the N. W. corner of S. E. ¼ of said section, running thence south 245 feet; thence east 696.4 feet to the center of Grand avenue; thence north 61 degrees west along the center line of said Grand avenue 508 feet to the north line of said S. E. ¼ of said sec. 33; thence west on the said north line of said quarter section 251 feet to the place of beginning, containing 2.66 acres, more or less.	
	Lots 28 and 29, in McNeill's resub'n of lots 1 to 19 and 28 to 30, both inclusive, in block 5, in McNeill's sub'n of bl'k- 6, 7, & 8, in Wright's addition to Chicago; all of A. J. Stone's addition to Maywood, in sections 3 and 10, 39, 12.	
	The S. W. ¼ of S. W. ¼ of sec. 16, 40, 13.	
	Lot B, in the partition of lots 9, 10, and 11, in bl'k ten, Union Park addition to Chicago.	
	The E. 20 1/2 feet of lot 12, all of lot 13, and the W. 9 1/2 feet of lot 14, in McNeill's resub'n of lots 1 to 19 and 28 to 30, both inclusive, in bl'k 5, in McNeill's sub'n of bl'k- 6, 7, and 8, in Wright's addition to Chicago.	
	Carried forward.....	430,865
13		
	Brought forward.....	$430,865
	The W. 40 feet of lot 3, the N. 35 feet of W. 40 feet of lot 6, and the E. 20 feet of lot 4 and the N. 35 feet of the E. 20 feet of lot 5, in bl'k 5 of Wright's addition to Chicago.	
	Sublot 11 in the sub'n of lots 1 and 2, bl'k 8 of Rockwell's addition to Chicago.	
	The E. 40 feet of lot 22, bl'k 5, in McNeill's sub'n of blocks 6, 7, and 8, in Wright's addition to Chicago.	
	Out lot or bl'k 7, except that part taken for the widening of Reuben street, now Ashland avenue, in the Canal Trustees' sub'n of the W. ½ and the W. ½ of N. E. ¼ of sec. 17, 39, 14.	
	A portion of the property described in this item has been taken by holders of prior encumbrances.	
	The decedent's interest in this certificate of sale was 70 per cent. thereof, value.....	114,000
	Certificate of sale of the following-described property:	
	Lot 16, bl'k 2, Union Park addition to Chicago, in S. W. ¼ of sec. 8, 39, 14.	
	Value of certificate of sale.....	12,000
	Total.....	$556,865

14 APPRAISER'S REPORT.

SCHEDULE II—Continued.

Inventory of Decedent's Estate.

Personal property.	Notes.	Items.	Fair market value.
Note, Joseph H. Bradley			$250,000
" " "			37,500
10 notes, " "			123,500
Note, C. G. Buckingham			10,000
" estate of John Sollitt			12,000
" William J. Martin *et al*			7,000
" John B. Skinner			2,500
	Interest on same		238
" " "			2,500
	" "		238
" " "			3,000
	" "		285.75
" " "			3,000
	" "		285.75
" " "			3,000
	" "		285.75
" " "			2,500
	" "		238
" " "			2,500
	" "		238
" " "			2,500
	" "		238
" " "			2,500
	" "		238
" " "			2,500
	" "		238
" " "			3,000*
	" "		285.75*
" Elijah T. Harris			22,000
	" "		2,263.05
" " "			18,000
	" "		1,859.76
" Memphis Street Railway Company			2,116,727.06
" Charles H. Ruddock			30,000
	Interest on same		6,780
" " "			16,372.09
" Ruddock Cypress Company			10,000
" " " "			10,000
" " " "			10,000
" " " "			10,000
" Wright, Mallory, Crawford & Raine			25,000
" " " " "			21,000
" William P. Rend			10,000
			$2,785,596.71

[* On margin:] 3,000, 385.75.

15 APPRAISER'S REPORT.

SCHEDULE II—Continued.

Inventory of Decedent's Estate.

Personal property.	Bonds.	Items.	Fair market value.
71 bonds, Chicago school,	$1,000, 3½ per cent		$72,420
2 " Chicago water,	100, 3½ per cent		204
Consols, U. S. A.,	7,000		7,560
10 " "	10,000 each, 4 per cent		108,000
30 " "	" " "		324,000
10 " "	" " "		108,000
500 bonds, Illinois Light, Heat and Power Co., $1,000 each, 7 per cent.			500,000
100 first-mortgage gold bonds, Dominion Coal Co., Ltd., $1,000 each, 6 per cent.			96,000
400 bonds, People's Gas Light & Coke Co., $1,000 each, 5 %			400,000
5 " City & Suburban R'y Co., $1,000 each, 6 %			5,000
1 bond, East End St. R'y Co., $1,000, 6 per cent			1,000
			$1,622,184

16 APPRAISER'S REPORT.

SCHEDULE II—Continued.

Inventory of Decedent's Estate.

Personal property.	Stocks.	Items.	Fair market value.
2,500 shares	Home nat'l bank		$250,000
50 "	Home savings bank		5,000
208 "	People's Gas L. & C. Co.		20,000
400 "	J. C. Grant Chemical Co.		40,000
1,112½ "	South Side Elev. R. R. Co.		50,000
1,562 "	New York Loan & Improvement Co.		50,000
3,334 "	Memphis St. R'y Co.		111,133.33
			$526,133.33
	Cash.		
Cash on hand			2,109,609.64
			$2,635,742.97

17 APPRAISER'S REPORT.

SCHEDULE II—Continued.

Inventory of Decedent's Estate.

Personal property.	Notes, desperate.	Items.	Fair market value.
Note, John J. Badenoch and Joseph Badenoch, Jr., $31,743.75			$15,000
" John S. Zimmerman, $5,500			3,500
" Swan Bros. & Frank, $50,000			15,000
Receiver's certificate			8,000
" F. Y. Robertson, $10,000			6,000
" L. F. Billings, $200			000
8 notes, Jno. R. Corbus, balance, $330			330
7 " Wm. Whalen, $14,243 59			000
Note, S. G. Wheeler, $1,942 50			000
	Stocks, desperate.		
60 shares Westinghouse Electric & Mfg. Co., par value, $50			2,160
11 " Woman's Home			000
	Judgments, desperate.		
Judgment, C. D. F. Smith, costs			000
" Wm. M. Stone, $653.11			000
			$49,990

18 *Summary.*

Notes	$2,785,596.71	
Bonds	1,622,184.00	
Stocks	526,133.33	
Cash	2,109,609.64	
Notes, stocks, and judgments (desperate)	49,990.00	
Total personal property	$7,093,513.68	
Total real estate	556,865.00	
Grand total		$7,650,378.68

Deductions.

Executrix and executors' fees, including counsel fees	210,000.00	
First annual report:		
Miscellaneous expenses	2,383.45	
Probate court costs	7,587.30	
Expenses of litigation	1,905.48	
Final report:		
Expenses of administration, etc	8,000.73	
Costs of administration and New York inheritance tax	8,121 56	
Total deduction		$237,998.52
Clear fair market value of decedent's estate		$7,412,380.16

The total personalty after paying fees, costs, and expenses, as above, and the widow's award of $12,070, is $6,842,445.16.

19 APPRAISER'S REPORT.

SCHEDULE III.

Taxable Estates and Interests Growing Out of the Estate of Albert M. Billings, Deceased.

Estates, beneficiaries, relationship, and description of property.	Appraised fair market value	Statutory exemption.	Rate.	Taxable cash value.
Augusta S. Billings (widow of testator):				
Widow's award..... $13,070.00				
Dower..... 69,266.70				
⅓ of personalty.....$2,280,815 05				
	2,363,151.75	20,000	1%	$2,343,151.75
Henry A. Billings, son:				
Income for life of $1,200 per year....	13,005.24	20,000	.....	.....
Harriet M. Farnsworth, stranger:				
Income for life of $1,200 per year....	12,168.00	.....	4%	12,168
Cornelius K. G. Billings, son:				
Specific devise of realty. 30,000.00				
Life interest in ⅓ of residue and remainder... 2,472,118.75				
	2,502,118.75	20,000	1%	2,482,118.75
Albert M. Billings Ruddock, grandson:				
Specific devise of realty. 16,000.00				
Life interest in ⅓ of residue and remainder... 1,408,374.77				
	1,424,374.77	20,000	1%	1,404,374.77

By the terms of the last will and testament of said decedent an estate in remainder of the value of $846,584.70 is not yet vested, it being provided that in case testator's son, C. K. G. Billings, die not leaving a child or children of his own issue, the property bequeathed to him for life, having at testator's death a remainder value in said sum of $846,584.70, shall go to Albert M. Billings Ruddock, grandson of testator, for life. Said C. K. G. Billings is still living and has two children, both living.

Also under said will an estate in remainder of the value of $250,976.95 is not yet vested, it being provided that in case
20 testator's grandson, Albert M. Billings Ruddock, who is still living, die not leaving a child or children of his own issue, then the property bequeathed to him for life, having at testator's death a remainder value in said sum of $250,976.95, shall revert and become the property and estate of testator's bother, John D. Billings (should he be alive at that time), and testator's living nephews and nieces, living at the time of the death of said grandson, share and share alike.

Total value of estate not yet vested..... $1,097,561.65

$7,412,380.16

APPRAISER'S REPORT.

SCHEDULE IV.

General Statement of Other Facts Relative to the Estates and Interests Growing Out of the Estate of Albert M. Billings, Deceased.

Upon investigation of the records of the probate court of Cook county I find that on February 23, 1899, a final report and account was filed by the executors of this estate in said court, which report and account has been approved by said court; that said final account and report contains as item as follows: "By executrix and executors' fees, including counsel fees, as per voucher attached, $420,000;" that said executors' commissions, as stated in said item, were allowed by special order of the then judge of said court, the Honorable Christian C. Kohlsaat.

A true copy of the said final report and account of the executrix and executors of this estate is hereto attached and marked Exhibit "D" and made a part hereof.

From the testimony given before me and from my observation of the affairs of this estate made in the course of this appraisement, I find that the sum of $210,000 is a fair and reasonable and proper amount to be deducted from the fair market value of this
21 estate for the executrix', executors', and counsel's fees.

The other items by me deducted from the value of this estate in arriving at the clear market value of the estate are taken from the first annual report of said executors and said final report, on file in the clerk's office of the probate court of Cook county. A true copy of said first annual report is hereto attached and marked Exhibit "E" and made a part hereof.

I also find that the widow, Augusta S. Billings, has filed in the probate court of Cook county a renunciation of the provisions made for her by the last will and testament of said decedent, and elected to take in lieu thereof her dower and legal share of the estate of the said decedent. A true copy of said renunciation is hereto attached and marked Exhibit "F" and made a part hereof.

APPRAISER'S REPORT.

SCHEDULE IV.

General Statement of Other Facts Relative to the Estates and Interests Growing Out of the Estate of Albert M. Billings, Deceased.

A true copy of the last will and testament of said decedent is hereto attached and marked Exhibit "C" and made a part of this report.

22 *Appraiser's Report.*

The foregoing, including the several schedules, together with Exhibits "A" and "B," hereto attached, constitute a full and correct report of said appraisement as made by me pursuant to said order of appraisement.

Respectfully submitted this 22nd day of June, A. D. 1899.

(Signed) HOWARD E. LEACH, *Appraiser.*

STATE OF ILLINOIS, } ss:
Cook County, }

Howard E. Leach, being duly sworn, says that the foregoing report, by him subscribed, is a true and correct report of the appraisement made by him in the matter of said estate, and that he has faithfully and fairly performed the duties of such appraiser according to the best of his understanding.

(Signed) HOWARD E. LEACH.

Subscribed and sworn to before me this 22nd day of June, A. D. 1899.

[Notary Public Seal.]

(Signed) ORLANDO W. KEATLEY,
Notary Public.

23 EXHIBIT "A."

County Court, County of Cook.

In the Estate of ALBERT M. BILLINGS, Deceased. Docket No. 283.

STATE OF ILLINOIS, } ss:
County of Cook, }

Howard E. Leach, being duly sworn, doth depose and say that he is the same person who was heretofore appointed appraiser in the above-entitled estate by the county court of Cook county, Illinois; that on the 12th day of July, 1898, he duly gave notice by mail, postpaid, to the treasurer of said Cook county, and to Mrs. Augusta S. Billings, 504 W. Lake St., Chicago; C. K. G. Billings, 470 Washington Boulvd., Chicago; Miss Marriet M. Farnsworth, 468 Washington Blvd., Chicago; Albert M. Billings Ruddock, 468 Washington Blvd., Chicago; Charles H. Ruddock, 468 Washington Blvd., Chicago; Henry A. Billings, 488 N. Hoyne Aven., Chicago, who are all persons known to have or claim an interest in the property which the decedent died seized and possessed of which is subject to taxation; that he would, as such appraiser, on the 22nd day of July, 1898, at eleven o'clock in the forenoon of that day, at 707 Security building, 188 Madison St., in the city of Chicago, Illinois, proceed to appraise and fix the value of the property which said decedent died seized and possessed of and which is subject to taxation under and pursuant to the statutes of the State of Illinois relating to the taxation of gifts, legacies, and inheritances in certain cases.

(Signed) HOWARD E. LEACH, *Appraiser.*

Subscribed and sworn to before me this ninth day of December, A. D. 1898.

(Signed) GEO. A. PFUHL,
[SEAL.] *Notary Public.*

24 Estate of A. M. BILLINGS.

Proceedings in Appraisal of said Estate by Howard E. Leach, Esq., Appraiser Appointed by the County Court of Cook County, Illinois.

"EXHIBIT B."

Estate of ALBERT M. BILLINGS.

In the Matter of the Appraisal of the Assets of the Estate of ALBERT M. BILLINGS, Deceased.

Proceedings in the above-entitled matter, September 30th, A. D. 1898, before Howard E. Leach, Esq., appraiser appointed by the county court of Cook county, Illinois.

Present: Howard E. Leach, Esq., appraiser; James F. Meagher, Esq., of Messrs. Winston & Meagher, attorneys for the estate.

ROBERT L. BENSON, having been first duly sworn, was examined by Mr. Leach and testified as follows:

Mr. MEAGHER: On behalf of Augusta S. Billings, the widow of Albert M. Billings, I object to the proceeding and investigation and examination about to be had by the appraiser, Howard E. Leach, Esq., on the specific ground that such proceeding in the case of Augusta S. Billings is beyond the power of the appraiser, Mr. Howard E. Leach; that such proceeding and all steps about to be taken thereunder are unauthorized and not warranted by any valid statute of the State of Illinois; on the further ground that the
25 alleged appointment of the appraiser, Mr. Howard E. Leach, by said county court of Cook county was invalid and without sanction of any valid law of the State of Illinois, and that the said appointment, if such were attempted to be made, did not comply with the requirements of law, and on the further ground that the county court had no power or jurisdiction to appoint Howard E. Leach as appraiser in the estate of Albert M. Billings, and that the proposed examination, investigation, and procedure *is* had and conducted without warrant of law.

2. I further object specifically to said procedure and all steps about to be taken thereunder, of whatever kind, upon the ground that the said procedure and the act of the legislature of the State of Illinois under which it is pretended said procedure is had and taken, and being "An act to tax gifts, legacies, and inheritances in certain cases, and to provide for the collection of the same," approved June 15th, 1895, in force July 1st, 1895, *is* null and void and of no effect when attempted to be enforced against the said Augusta S. Billings.

3. On the further ground that said act is null and void, because it is in conflict with and in violation of the provisions of article IX of the constitution of the State of Illinois when attempted to be enforced against the said Augusta S. Billings.

4. On the ground that the said procedure and all steps proposed to be had and taken thereunder and said alleged act of the legislature of the State of Illinois, entitled "An act to tax gifts, legacies, and inheritances in certain cases, and to provide for the collection of the same," *is* null and void, because said act is in conflict with and in violation of the provisions of the fourteenth amend-
26 ment to the Constitution of the United States of America when attempted to be enforced against the said Augusta S. Billings; and I object to the said proceeding and all steps proposed to be had or taken thereunder because when attempted to be enforced against the said Augusta S. Billings it is a taking of private property without due process of law and is a denial of the equal protection of the laws to the said Augusta S. Billings, and, as such, in conflict with and in violation of the constitution of the State of Illinois and the Constitution of the United States of America and all amendments thereto.

I make the same objections severally on behalf of Cornelius K. G. Billings and on behalf of Albert M. Billings Ruddock, severally, heirs of Albert M. Billings, deceased—that is to say:

1. On behalf of Cornelius K. G. Billings and on behalf of Albert M. Billings Ruddock, severally, I object to the proceeding and investigation and examination about to be had by the appraiser, Howard E. Leach, Esq., on the specific ground that such proceeding in the case of Cornelius K. G. Billings and Albert M. Billings Ruddock, severally, is beyond the power of the appraiser, Mr. Howard E. Leach; that such proceeding and all steps about to be taken thereunder are unauthorized and not warranted by any valid statute of the State of Illinois; on the further ground that the alleged appointment of the appraiser, Mr. Howard E. Leach, by said county court of Cook county was invalid and without sanction of any valid law of the State of Illinois, and that the said appointment, if such were attempted to be made, did not comply with the requirements of law, and on the further ground that the county court had no power or jurisdiction to appoint Howard E. Leach as appraiser
27 in the estate of Albert M. Billings, and that the proposed examination, investigation, and procedure is had and conducted without warrant of law.

2. I further object specifically to said procedure and all steps about to be taken thereunder, of whatever kind, upon the ground that the said procedure and the act of the legislature of the State of Illinois under which it is pretended said procedure is had and taken, and being "An act to tax gifts, legacies, and inheritances in certain cases, and to provide for the collection of the same," approved June 15th, 1895, in force July 1st, 1895, is null and void and of no effect when attempted to be enforced against the said Cornelius K. G. Billings and Albert M. Billings Ruddock severally.

3. On the further ground that said act is null and void, because it is in conflict with and in violation of the provisions of article IX of the constitution of the State of Illinois when attempted to be enforced against the said Cornelius K. G. Billings and Albert M. Billings Ruddock severally.

4. On the ground that the said procedure and all steps proposed to be had and taken thereunder and said alleged act of the legislature of the State of Illinois, entitled "An act to tax gifts, legacies, and inheritances in certain cases, and to provide for the collection of the same," is null and void, because said act is in conflict with and in violation of the provisions of the fourteenth amendment to the Constitution of the United States of America, when attempted to be enforced against the said Cornelius K. G. Billings and Albert M. Billings Ruddock severally; and I object to the said proceeding and all steps proposed to be had or taken thereunder, because
28 when attempted to be enforced against the said Cornelius K. G. Billings and Albert M. Billings Ruddock severally it is a taking of private property without due process of law, and is a denial of the equal protection of the laws — the said Cornelius K. G. Billings and Albert M. Billings Ruddock severally, and as such in conflict with and in violation of the constitution of the State of Illinois and the Constitution of the United States of America and all amendments thereto.

Mr. LEACH:

Q. Mr. Benson, what is your full name?
A. Robert L. Benson.
Q. How old are you, Mr. Benson?
A. Thirty-five years old.
Q. What is your business?
A. I am connected with the estate of A. M. Billings in the capacity of secretary. During the lifetime of Mr. Albert M. Billings I was his private secretary, and for five or six years prior to his death I had almost entire charge of his papers and documents, and had probably more to do with his various business interests than any other one person. Mr. Billings was sick the greater part of the time, being often confined to the house for days and weeks at a stretch.
Q. I will ask you to state about how long you were connected with Mr. Billings in the capacity you have outlined.
A. In the capacity I have outlined, about six or seven years.
Q. You were employed by him prior to that time in other capacities, were you?
A. Yes, sir; before that I was acting as the private secretary of the cashier of the Home national bank, of which Mr. Billings was the president. I began with the bank July first, 1889.
Q. I will ask you to state—and I do not want to ask an
29 embarrassing question—whether or not your relations with Mr. Billings were what would ordinarily be termed intimate.
A. Yes, sir; I should say very much so.
Q. I will ask you to state whether or not you had a close acquaintance with his property and the elements which made up his property.
A. Yes, sir; I did.
Q. And that intimacy and knowledge continued up the time of Mr. Billings' death, did it?

A. Yes, sir.

Q. And since then, as I understand you, you have acted in a similar capacity for his heirs?

A. Yes, sir.

Q. (Handing witness document.) Look at the paper I now show you, being the inventory of the estate of Albert M. Billings.

A. I have a copy of it here.

Q. State what the fact is as to that inventory having been largely or otherwise made up from your knowledge of Mr. Billings' affairs.

A. Yes, sir; very largely so.

Q. I will ask you to state, if you know, substantially what was the value of the various items of the property owned by Mr. Albert M. Billings at the time of his death, February 7th, 1897.

A. Yes, sir; I am familiar with them.

Q. Turning now to the items of personal property described in the inventory filed in his estate, I will ask you to turn to item No. 1, on page 7*b*, of personal property. The first item is a note, dated Chicago, June 24, 1897, for $250,000, signed by Joseph H. Bradley, payable to the order of himself (and by him endorsed in blank), on or before five years after date, in gold coin of the United States, with interest at six per cent., payable semi-annually, and with seven per cent. after maturity, principal and interest payable at the office of the Home National Bank of Chicago. What was the fair cash value of that note at the time of Mr. Albert M. Billings' death?

A. $250,000.

Q. I observe that the note is dated some months after Mr. Billings' death. Will you explain how that came about?

A. That was simply a renewal of the same indebtedness.

Q. What is the fact as to whether or not that note and interest has since been paid?

A. It has been paid in full.

Q. What interest was due at the time of his death?

A. Well, I should have to figure that up. I will say in connection with the interest on this note of $250,000 that whatever the same was at the time of Mr. Billings' death it was comprised in the cash account and will appear as cash in the inventory.

Q. Item No. 2 is a note signed by Joseph H. Bradley, bearing the same date as the last item, for $37,500. What, in your opinion, was the fair cash value of that note at the date of Albert M. Billings' death?

A. $37,500.

Q. And the same explanation with respect to the interest?

A. Yes, sir.

Q. Item No. 3 is ten notes, each for the sum of $12,350, all dated June 24th, 1897, signed by Joseph H. Bradley. What would you say as to the value of those notes as of the time named?

A. They were worth their face—$123,500.

Q. Items Nos. 2 and 3, I take it, are still unpaid and outstanding?

A. That is correct. They are not yet paid.

Q. And item No. 4 is a note of C. G. Buckingham, dated Septem-

ber 28th, 1883, for $10,000. What was the fair cash value of that at the time named?

31 A. That was worth its face, and it has since been paid.

Q. When was the interest paid on that?

A. The same explanation as to the interest that was given in connection with the Bradley notes will apply to this note of Buckingham's for $10,000.

Q. Item No. 5, on page 12 *b*, is a note of John Sollitt—or rather the estate of John Sollitt—dated April 26th, 1889, for $20,000. What would you say as to that at the time of Mr. Billings' death?

A. The unpaid balance on that note amounted to $12,000. The note was worth $12,000 at that time. It has since been paid and the interest turned into the cash account, as heretofore explained in regard to the other items.

—. Item No. 6 is a note of William J. Martin, dated July 8th, 1895, for $7,000.

A. That note was worth $7,000 at the time of Mr. Billings' death. It has since been paid and interest turned into the cash account, as heretofore explained.

Q. Nos. 7 and 8 are notes of John B. Skinner, each for $2,500, dated October 12, 1888. What do you say as to those two notes?

A. Those notes are worth their face. They have not been paid.

Q. And they were worth their face at the time of Mr. Billings' death, were they?

A. Yes, sir.

Q. No. 9, No. 10, and No. 11 are each notes of John B. Skinner for $3,000. What do you say as to those notes?

A. They are worth their face, and were worth their face at the time Mr. Billings died.

Q. Items Nos. 12, 13, 14, 15, and 16 are each notes of John

32 B. Skinner for $2,500 each. What do you say touching those notes?

A. They were at the time of Mr. Billings' death worth their face and are still. They have not been paid.

Q. Items Nos. 17 and 18 are each notes of John B. Skinner for $3,000. What do you say as to those notes?

A. They are worth their face and were worth their face at the time Mr. Billings died.

Q. The next item, No. 19, is a note of Elijah T. Harris, dated April 6th, 1886, for $22,000, signed by Elijah T. Harris and William H. Winslow. What do you say about that?

A. That note is worth its face and was worth its face at the time Mr. Billings died.

Q. Item No. 20 is a note dated October 1, 1890, for $18,000, signed by Elijah T. Harris. What was the fact with respect to that note?

A. That note is worth its face and interest and was worth the same at the time of Mr. Billings' death.

Q. I will now ask you to turn to item 21, being a note dated Memphis, December 7, 1897, made by the Memphis Street Railway Company, payable on demand to the order of Augusta S. Billings, C. K. G. Billings, and C. H. Ruddock, executors of the last will

and testament of Albert M. Billings, deceased, for the sum of $2,116,727.06, bearing interest after date until paid at the rate of six per cent. per annum. I will ask you to state what was the value of that indebtedness at the time of the death of Albert M. Billings.

A. In answering this question I want to make a little explanation for the benefit of the record. I will say that I consider that indebtedness of $2,116,727.06 as being about worth its
33 face. I say "about" for the reason that if there is any difference it will probably fall short of being worth its full face rather than to go over, for the reason that there is a bonded indebtedness ahead of this indebtedness of $1,161,000; and, in addition to this, in placing a value on anything in Memphis or in that territory, particularly at the time of Mr. Billings' death, the question of yellow fever cuts a very large figure, for the reason that upon the first sign of yellow fever a large portion of the Memphis population leaves the town.

Q. I see this is a note made by the Memphis Street Railway Company.

A. That explains it.

Q. Their revenues are affected by the departure of the people?

A. Very largely; yes, sir.

Q. Give an instance within your own knowledge touching that—as to how it would affect the receipts—the traffic and travel.

A. I will say that during the past few weeks, with the yellow fever—just simply the fear of it, and not the yellow fever itself as it appeared in Memphis—our receipts have been affected fully 25 to 33 per cent.; some days much larger than that, and for this reason: The bulk of the receipts from most southern roads, or at least a large portion of the receipts, comes from their traffic in the evening, by reason of the heat during the day, as there is a widespread prejudice throughout the fever country against being out in the night air during yellow-fever time. Of course, we lose very largely on account of their failing to travel at night, and also during the day, because they fear infection from crowds in the street cars or in any public conveyance.

34 Q. Has yellow fever, as a matter of fact, yet ap[illegible]ed in Memphis this year?

A. No, sir; not up to as late as the day before yesterday.

Q. But still your receipts are affected because there is yellow fever in the South?

A. Yes, sir.

Q. Has there been any other time in Memphis since the death of Mr. Billings when there has been a yellow-fever scare, so called?

A. Yes, sir; each summer we have it. Last summer it was more than a scare. The yellow fever actually got into Memphis and created a great deal of trouble all around.

Q. Were there some deaths?

A. Yes, sir; a number of deaths. Just the number I do not know, but I do know that on the first day when the excitement started there were thousands of people—I should say six or seven thousand

people, from recollection—left Memphis on that one day, leaving by train and by boats and by roads, or any conveyance.

Q Anything to get out of town?

A. Yes, sir; and as a rule, those people that can leave town are the people that can afford to pay car fare, so that our losses by reason of yellow fever are very heavy. I will also say, in connection with this, that a large number of notes and securities of various kinds listed in this schedule are merely collateral to this indebtedness of $2,116,727.06.

Q. I will ask you to state if that was the shape of the note at the time of Mr. Billings' death as now shown by the inventory.

A. Yes, sir; with the exception that the item shown there (indicating inventory) of $83,272.94 is for interest which has accrued since Mr. Billings' death, and theretore cannot appear as one
35 of his assets at the time of his death.

Q. You refer now to item 22 of the inventory filed?

A. Yes, sir.

Q. But item 21 gives the correct amount and all interest that was due to Albert M. Billings on February 7, 1897, at the time of his death?

A. Yes, sir; in my judgment.

Q. How was that indebtedness evidenced at the time of his death?

A. By various notes.

Q. And this note of December 7th, 1897, was by way of renewal of the other notes?

A. Yes, sir.

Q. And the value of that note you put at $2,116,727.06?

A. Yes, sir.

Q. Item No. 22 was not in existence at the time of Mr. Billings' death, was it?

A. No, sir; it was not.

Q. And it represents the interest from what time to what time?

A. From Mr. Billings' death up to the date of the large note of $2,116,727.06, such date being December 7th, 1897. I would like to say in connection with this Memphis interest that when I say that this valuation of $2,116,727.06, if anything, may be an overvaluation, it must be bourne in mind that there has been a new north-and-south railroad completed through Arkansas. I believe that goes down to Port Arthur, on the gulf, which cuts out a good deal of the cotton and other trade which used to be handled through Memphis. That fact must be bourne in mind in appraising the Memphis notes.

Q. And that is since the death of Mr. Billings?

A. Yes, sir; that is since the death of Mr. Billings.

Q. This note of $2,116,727.06 was made up in what manner
36 and from what elements?

A. It was made up of notes signed by the Memphis Street Railway Company and of amounts spent by Mr. Billings to buy in adverse interests in other roads. There were four others besides their own, which he had to buy in.

Q. And for all of which he had notes?

A. Not in each case notes, but open accounts in some instances.

Q. I will ask you if that note for $2,116,727.06 comprised any interest.

A. Yes, sir; there is a large item — interest in there—in fact, being interest on his advancements, and the advancements themselves up to the time of his death.

Q. February 7th, 1897?

A. Yes, sir.

Q. And, as I understand, this note was by agreement with the other interests involved in Memphis?

A. Yes, sir.

Q. And was a full settlement of all of Mr. Billings' debts down there by the giving of this note to that extent?

A. Yes, sir. As I before explained, that leaves all this other matter here—securities and old notes and one thing and another—simply as collateral to this one large note.

Q. And they are still held in that way as collateral?

A. Yes, sir; leaving the stock that we hold merely standing on the books. They are of no value unless Memphis has a visitation of Providence in her behalf in the future.

Q. The next item is No. 23, a note of Charles H. Ruddock, dated December 21, 1891. What would you say was the value of
37 that note at the time stated?

A. That note is worth its face and interest, and was so worth its face at the time of Mr. Billings' death.

Q. Who was Mr. Ruddock?

A. He was the son-in-law of Albert M. Billings. He married Mr. Billings' daughter, Sarah Billings.

Q. Is he the father of Albert M. Billings Ruddock, who is mentioned here?

A. He is.

Q. The next is item No 24, a note of Charles H. Ruddock, dated February 1, 1894, for $16,372.09. I will ask you the same question with relation to that note.

A. That note is worth its face and interest, and was so at the time of Mr. Billings' death.

Q. Item No. 25, a note for $10,000, dated February 2, 1891, signed by Mr. Ruddock, payable three years after date. The balance due on this note is $5,000. What do you say with respect to that balance?

A. That balance was worth its face at the time of Mr. Billings' death.

Q. Item No. 26 is a note signed by Mr. Ruddock, dated February 2, 1892, for $3,325. What do you say as to the value of the remaining unpaid portion of that note, as of the date of Mr. Billings' death?

A. That is worth its face and interest.

Q. Item No. 27 is a note signed by the Ruddock Cypress Company, dated September 17, 1894, for $10,000. What should you say as to the value of that note?

A. At the time of Mr. Billings death that note was worth its face,

and it is worth it still. The interest on it was paid and ap-
38 pears in the cash account—that is, paid to the time of Mr. Billings' death.

Q. Item No. 28 is a note, dated October 13, 1894, signed by the Ruddock Cypress Company, Limited. I will ask you the same question as the last with respect to that.

A. It was worth its face at the time Mr. Billings died. The interest has been paid and turned into the cash account up to the time of his death.

Q. Item No. 29 is a note, dated October 22nd, 1894, for $10,000, signed by the Ruddock Cypress Company. It will ask you the same question with respect to that note.

A. It was worth its face, $10,000 and interest, the latter being paid into the cash account up to the time of Mr. Billings' death.

Q. Item No. 30 is a note, dated February 11, 1895, for $10,000, signed by the Ruddock Cypress Company.

A. That note was worth its face and interest at the time that Mr. Billings died, the interest being turned into the cash account up to the time of Mr. Billings' death.

Q. Item No. 31 is a note of Wright, Mallory, Crawford & Raine, dated June 12, 1895, signed by W. J. Crawford, Luke E. Wright, W. B. Mallory, and G. D. Raine, for $25,000. I will ask you the same question with respect to that note.

A. That note was worth its face at the time of Mr. Billings' death, and the interest being paid into the cash account up to the time of Mr. Billings' death.

Q. Has that note been paid?

A. Yes, sir; that note has since been paid and interest. It
39 was paid very soon after Mr. Billings' death.

Q. Item No. 32 is a note, dated June 19, 1896, for $21,000, signed by Raine, Crawford, Wright & Mallory, payable on demand. I will ask you the same question touching that note.

A. That note was worth its face at the time of Mr. Billings' death, and the interest was paid into the cash account. That note has also been paid since Mr. Billing-' death.

Q. Was there $21,000 due on that note at the time of Mr. Billings' death?

A. Yes, sir.

Q. And there was $25,000 due on the other Memphis notes at the time of Mr. Billings' death?

A. Yes, sir.

Q. The next is item No. 33, an unsecured note, dated October 12, 1897, signed by William P. Rend, given for renewal. I will ask you the same question touching that note.

A. That note was worth its face only at the time of Mr. Billings' death, for the reason that Mr. Rend was in the habit of discounting his notes—that is, the interest was deducted in the shape of a discount when he would renew it.

Q. The next item comes under the heading of "bonds." Were there any other unsecured notes owned by Mr. Albert M. Billings at

the date of his death than those you have designated in this examination?

A. There were not.

Q. Except, possibly, as to some desperate notes back here at the end of the inventory?

A. Yes, sir; except as to some desperate claims that we attached no value to and which we will come to later on.

Q. The first item under the heading of "bonds" shown
40 by the inventory is 71 City of Chicago school coupon bonds, of the par value of $1,000 each, bearing 3½ per cent. interest. I will ask you to state what, in your opinion, was the value of those bonds at the date of Mr. Billings' death.

A. Those bonds, in my opinion, were worth about two cents in excess of par at the time of Mr. Billings' death.

Q. Do you think they were worth 102?

A. I think so.

Q. They were 3½ per cent. bonds, you say?

A. Yes, sir.

Q. Item No. 2 is two city of Chicago water bonds of the par value of $100 each, bearing 3½ per cent. interest. What, in your opinion, were they worth at the time of Mr. Billings' death?

A. I think at that time they were worth 102.

Q. Item No. 3 is United States of America four per cent. consols, dated 1877, maturing 1907, registered in the name of Albert M. Billings. They aggregate $7,000. What, in your opinion, was the value of those bonds at that time?

A. At the time of Mr. Billings' death there was considerable financial depression, as every one knows, and while the market value of United States four per cent. of 1907 was about $1.11, I do not think that $1.11 could have been realized at that time by turning into the market the number of bonds which Mr. Billings held.

Q. The first item aggregate- $7,000, being item No. 3 under the head of "bonds." What should you say those $7,000 of bonds were worth?

A. I should say, if they were fed into the market slowly, probably $1.10.

41 Q. The next item under the head of "bonds" is No. 4, 10 United States four per cent. registered gold consols of the par value of $10,000 each, or an aggregate of $100,000. What, in your opinion, was the value of those at the time of Mr. Billings' death?

A. The same explanation which I have given with respect to the $7,000 item I give as to this, and that is about $1.10, if judiciously handled, and not otherwise.

Q. The next item under the head of "bonds," being item No. 5, is 30 of the same class of securities as those just described, aggregating $300,000. What do you say about them?

A. I hold the same opinion as to them as to the preceding bonds—that is, about $1.10.

Q. Item No. 6 is 10 of the same kind of certificates, aggregating $100,000.

A. The same explanation.

Q. Now, Mr. Benson, there is over $500,000 of four per cent. bonds. Do I understand you to swear that you could, in your opinion, sell all those bonds on the market for a premium of 10 per cent. on the total amount within a reasonable time?

A. Well, if given time it could be done.

Q. How much time would you say?

A. Well, that would depend very largely on the state of the market. Figuring the market as it was then, I should say a period of, perhaps, several months would be necessary to get that much out of them. I remember that three or four years previous to Mr. Billings' death we unloaded about that same amount of bonds, and I remember I was much astonished that we did not realize the full market value for them, but, on the contrary, it was several points below. The explanation was that the market would not ab-
42 sorb half a million of bonds all at once without reducing the price very materially in the open market.

Q. You were connected with Mr. Billings and his bank during a number of years?

A. Yes, sir. I had very largely to do with all bank matters connected with the Home national bank and the Home savings bank.

Q. Mr. Billings was the president of both of those banks, was he?

A. Yes, sir.

Q. Do you recall the panic that commenced in June, 1893?

A. Yes, sir; I do.

Q. Distinctly, I suppose?

A. Yes, sir; and your reference to that panic makes me think that if any effort had been made at that time to float our United States bonds that they could not have been floated at any price, for the reason that one of our neighboring banks attempted to realize on their United States bonds for the purpose of paying their depositors, and they could not dispose of them.

Q. I was just about to call your attention to that circumstance.

A. I had forgotten it.

Q. Is it not a fact that during the troublous financial time following the panic which commenced in June, 1893, that you could not sell Government bonds, nor even raise money upon them by way of loans?

A. Yes, sir; for a considerable time.

Q. How long did that panic, in its intensest period, last?

A. Well, it lasted, according to the district—for instance, it lasted longer in this western country than it did in the East. As to those United States bonds at that time, I doubt if more than 102
43 or 103 could have been had for them in Chicago.

Q. At that time?

A. Yes, sir.

Q. Now I will ask you if you know what the state of the financial market was at the time of Mr. Billings' death, in February, 1897?

A. It was still very stringent, and it was very difficult to get money under any conditions.

Q. Was not the financial situation at that time much disturbed,

owing to the utter lack of knowledge as to what the incoming administration would do in financial circles?

A. Yes, sir; that cut a very large figure. The free-silver heresy—if I might call it that—created a great deal of uneasiness and disquiet in all financial circles.

Q. Mr. McKinley was inaugurated when?

A. March 4th, 1897.

Q. Now, Mr. Benson, taking these facts into consideration, do you still think that at the time of Mr. Billings' death you could have disposed of upwards of $500,000 of Government bonds at 1.10 in the market within a reasonable time?

A. No, sir; I do not. I am free to say that I had not figured on this incoming administration and the disquiet and uneasiness arising from the free-silver heresy at that time when I made my statement that the market quotation was about $1.11.

Q. Then what — you say now, taking all those things into consideration, was the fair, full cash market value of those bonds at that time?

A. $1.03 I would say. I remember there was a lack of a flat statement from President McKinley accepted by the public in re-
44 gard to his policy on the gold and silver question.

Q. The next item I call your attention to is No. 7, under the head of "bonds," and it covers 500 bonds of the Illinois Light, Heat & Power Company, numbered from 1 to 500, both inclusive, of the par value of $1,000 each, dated November 18, 1885. What do you say about them?

A. Those bonds were worth par at the time of Mr. Billings' death, but if there was a disposition to be unfriendly towards the company issuing those bonds by the other gas interests of the city, they would hold up to par, in my judgment.

Q. The next item, No. 8, covering 100 first-mortgage gold bonds of the Dominion Coal Company, Limited, of the par value of $1,000 each, aggregating $100,000—I will ask you to state what, in your opinion, those bonds were worth at the time of Mr. Billings' death.

A. I am inclined to think that the valuation of $100,000 placed on those bonds is a little high, because they only cost us 93 cents.

Q. What would you say they were worth at the time of his death?

A. I should say 96 cents.

Q. The next item I direct your attention to is number 9, under the head of "bonds," 400 refunding five per cent. gold bonds, Nos. 421 to 820, inclusive, of the People's Gas Light & Coke Company of Chicago, of the par value of $1,000 each. What, in your opinion, was the value of those bonds as of the date of Mr. Billings' death?

A. I think they were worth their face—$400,000.

Q. The next item I direct your attention to is No. 10, five City and Suburban Railway bonds, each for the sum of $1,000,
45 dated February 28th, 1891, bearing interest at six per cent. per annum. What, in your opinion, was the value of those bonds at the date of Mr. Billings' death?

A. They were worth their face at the time of his death. Since then they have been paid.

Q. I will direct your attention now to item No. 11, under the heading of "bonds"—one East End Street Railway Company bonds, of the par value of $1,000, dated April 1st, 1894—and ask you the same question touching that bond.

A. I think that was worth its face, or was so worth at the time of Mr. Billings' death.

Q. Turning now to items of property designated as "stocks," I will direct you to the first item, No. 1, being certificates for 2,500 shares of the capital stock of the Home National Bank of Chicago, of the par value of $100 each, being all of the capital stock of the said bank, and aggregating $250,000. I will ask you what, in your opinion, was the value of that stock at the time of Mr. Billings' death.

A. I think that was worth par—that is, $250,000. I will state, in this connection, that if that estimate is wrong in any particular, it is for the reason that at the time of Mr. Billings' death, in 1897, we had been through a period of about four years of financial depression, and we were obliged to be very lenient with the people with whom we did business and loaned money to, by reason of the fact that our place of business was on the West Side, on the corner of Washington boulevard and Halsted street, and a large portion of our customers were West Side small merchants and manufacturers, and it was to them that we loaned very largely. When the
46 panic struck us we found those merchants and manufacturer- unprepared, and we were obliged to make concessions and compromise claims and suffer losses, and the result has been that we have a great deal in the way of unsettled matters—real-estate equities and things of that kind—that only time can fix the actual value of; but I am of the opinion that par will be eventually worked up to.

Q. What is the situation touching that bank today?

A. The bank was found to be unprofitable, and it was put into a voluntary liquidation as the quickest way of getting our matters closed up, and this mode of handling the matter, of course, cut us out of realizing anything upon the good will of the bank, and the good will of any corporation is usually figured on, at least to some extent, in placing a valuation on its stocks. Our charter, of course, was surrendered or we are obliged to surrender it.

Q. And you paid off all creditors?

A. All creditors were paid off in full on demand.

Q. And you took what there was in the shape of assets?

A. Yes, sir.

Q. And time alone will develop whether you will get your money back or not?

A. Yes, sir. I will say in this connection that, of course, our loans were not confined to the West Side small tradesmen only. We have, in addition to what we got from them, real estate in Nebraska and various parts of the country, the value of which is entirely problematical, the First National Bank of Kearney, Nebraska, being one institution that went down, owing the bank

about $20,000, and that bank is in the hands of a receiver,
47 and only about thirty-five per cent., if that much, will be received on that debt. I give this simply as an instance. There were others of a similar character.

Q. The next item, under the head of "stocks," is 50 shares of the Home savings bank, being the entire capital stock of the Home savings bank, of the par value of $100 each. What would you say as to that?

A. That was worth its face, $5,000 total, and that was the price we got for the same when we disposed of the bank after Mr. Billings' death.

Q. Then, I understand you, you have since sold this stock of the Home savings bank?

A. Yes, sir; this entire capital stock has been sold.

Q. What did you get for it?

A. Dollar for dollar.

Q. $5,000?

A. $5,000.

Q. The next item is certificate for 208 shares of the capital stock of the People's Gas Light & Coke Company. What did you estimate the value of that to be at the time of Mr. Billings' death?

A. That 208 shares was worth $20,000. I believe the market quotation was considerably less than that, but that is my remembrance of it now.

Q. The next item is No. 4, being 400 shares, all of the capital stock of the J. C. Grant Chemical Company, of the par value of $100 each. What would you say as to that?

A. That was worth then $40,000 par, and it — still worth that much.

Q. What were the circumstances under which that money was invested there?

48 A. The J. C. Grant Baking Powder Company, which was the predecessor of this J. C. Grant Chemical Company, went into the hands of a receiver by reason of disputes among the stockholders. At that time they owed Mr. Billings about $20,000, and he conceived the idea that the other stockholdere were attempting to strip Mr. Grant, and with that idea in his mind he went into the county court and bought up the whole concern himself for the protection of Mr. Grant and our debt and organized the new company, the capital stock of which was $40,000.

Q. That represented just what he had put into it, did it?

A. Well, not quite. There was still an old debt of about $7,000 that the bank never got.

Q. When you say "the bank," you mean whom?

A. The Home national bank; and we gave $45,500 for the concern, and capitalized it at $40,000 and put $5,500 in the surplus account.

Q. Is there any market for that stock?

A. None whatever.

Q. Has it ever been quoted or listed?

A. No, sir.

Q. Is there any value to the stock except it is given value by being operated?

A. That is all.

Q. Who operates it now?

A. We operate it ourselves—the executors of the estate—and the secretary of the company has more largely to do with the company than any one else connected with the estate.

Q. Could you sell that stock today for $40,000?

A. I don't believe we could. I think it could be sold for that within a very short time.

49 Q. Well, you think, do you, that $40,000 is the fair value of it?

A. Yes, sir; I do.

Q. The South Side Elevated Railroad Company is the next item, being No. 5. Certificates for 1,100 shares, each of the par value of $100, standing in the name of the executors of the estate. What, in your opinion, was the value of that stock and of the next certificate, being 12 shares? I see there were only 1,112 and the fractional scrip for $50 for a half share. What, in your opinion, was the fair cash value of that 1,112½ shares of stock of the South Side Elevated Railroad Company at the time of Mr. Billings' death?

A. While the market quotation of that stock at the time of Mr. Billings death was about 62 cents, yet I think $50,000 for the 1,100 shares is a very fair estimate, and, if anything, a high estimate for that block of stock, for the same reason as was given in connection with the Government bonds—that is, the uncertainty of the money market—the uncertainty of the attitude of the incoming administration. I am inclined to think that it would have been almost impossible to have sold at that time as large a block of stock as 1,100 shares, for the reason that the South Side Elevated Railroad Company was at that time going through its reorganization.

Q. Just emerging from the receivership?

A. Not quite out yet, and the plan, if I remember, was not at that time fully matured.

Q. How did Mr. Billings come to get that 1,112½ shares?

A. He bought some bonds of the old South Side company and some stock. When the reorganization and foreclosure took

50 place his stock was rendered valueless and they gave him this new stock for the old.

Q. That was an investment of about $100,000 or upwards?

A. $100,000.

Q. There has been some activity lately in connection with this South Side elevated road, has there not?

A. Yes, sir; and I believe within the last few days it has got as high as 79⅞.

Q. Due to what, if you know?

A. Due to the belief on the part of the speculative public that the South Side surface road—the Chicago City railroad, the cable line—was about to absorb the elevated line and use its own east and west lines as feeders to the elevated system.

Q. That has made more or less of a market for this stock, has it?

A. Yes, sir; that has made more of a market than it has been for a number of years.

Q. Was there any market for it at the time of Mr. Billings' death?

A. No, sir. As I said before, I doubt if as large a block as 1,100 shares could have been disposed of at any such figure as $50,000 at that time.

Q. The next item that we have here is No. 6, which is a certificate for 1,562 shares of the capital stock of the New York Loan & Improvement Company, and it appears that the certificates nowhere appear among the papers of Mr. Billings, but a new certificate or certificates for said stock can probably be secured. I will ask you to state what you know about that stock, and what was discovered by investigation.

51 A. During his lifetime I had often heard Mr. Billings speak of his holdings in the New York Loan & Improvement Company, but he never used any figures in connection with it. He was a director in the company for a long time, and after his death, in searching for something that would show his holding, we simply found a memorandum calling for 1,562 shares in the name of A. M. Billings. The officers of the New York Loan & Improvement Company also stated that that was the number of shares standing in Mr. Billings' name at the time of his death. We had considerable difficulty in finding any market quotation for this stock, and I believe all that we did learn was learned from just the favored few that were well posted in connection with the affairs of that company, it being a company that looks very largely to the future for its value.

Q. It owns a bridge, does it not, across the Hudson river?

A. Yes, sir; and it owns an elevated railroad in New York city, and they spread out pretty wide, and they have to use about all they can earn to take care of the property. My recollection of the value placed on that stock at the time of Mr. Billings' death was 26 cents, in place of 32 cents, which appears in this schedule. The executors gave it a value of 32 cents.

Q. And you say you got a price on it of 26 cents?

A. My recollection is that the price was 26 cents. This New York Loan & Improvement Company is the one, I think, about which I probably know less than any other item connected with this schedule.

Q. That is true of everybody, is it not?

A. Yes, sir.

Q. What would you say was the fair cash value of these
52 1,562 sheres?

A. We gave it a value of $50,000. I should think that was fully the value of it.

Q. You would not put it any higher?

A. No, sir; I would reduce it five thousand dollars or six thousand dollars. That item of $50,000 wholly covers it.

Q. The next item, No. 7, is a certificate for 3,334 shares of the capital stock of the Memphis Street Railway Company, each share being of the par value of $100. I will ask you what, in your opin-

ion, was the fair value of that stock at the time of Mr. Billings' death.

A. At the time of Mr. Billings' death I do not think that stock had any value at all. I would class that entire item of $11–,133.33 in with the other securities going to secure that $2,116,727.06.

Q. Has any interest or dividend ever been paid on that stock?

A. No, sir; there never has been. I will say in this connection that the Memphis stock has not paid a dividend since 1889, at which time C. B. Holmes and his associates took hold of the concern and declared a dividend which came out of the assets of the company, and should not have been considered a dividend at all. It was simply a division of assets that belonged to the company that was not justified by the facts. Some of the Memphis parties refer to this as a most unjustifiable act, and we look at it in the same light.

Q. Was not a bill in equity filed in Tennessee based on that action?

A. Yes, sir; there was.

Q. Holmes at that time was trying to consolidate those roads down there, was he not?

A. Yes, sir; and he issued about half a million of stock, and that suit was brought to annul that stock, if possible.

Q. And on that increased stock and other stock he declared a dividend out of the assets of the company?

A. Yes, sir.

Q. And that was the only dividend that has been paid?

A. That is the only one I have any recollection of. It has never paid a dividend since that.

53 Q. I will ask you why that estimated value was put in there at $111,133.33.

A. As a matter of convenience in valuing the stock.

Q. Was that value put on there with any possible view of a division of the estate among the heirs?

A. Yes, sir; that is my belief and impression, but at the time Mr. Billings dies, as I say, then it had no value except as collateral to the other liabilities of $2,116,727.06.

Q. Is that stock quoted anywhere?

A. No, sir; it is not quoted anywhere.

Q. On any exchange—good, bad, or indifferent?

A. No, sir; not even in Memphis, Tennessee.

Q. What is there ahead of that stock, if you know?

A. The entire indebtedness of which I spoke is ahead of it.

Q. And what is that?

A. That $2,116,727.06 and, in addition to that, the bonded indebtedness of $1,161,000.

Q. State what your personal knowledge is as to the ability of that company to pay the interest on its fixed debt.

A. It is able to do it under the very best conditions. When we have yellow fever, or even a threat of yellow fever, it is unable to pay the interest on the fixed debt, and of course that leaves nothing for the stock. I would not even give it a nominal value. I would

not give it any value whatever, for the reason that it is wholly at the mercy of indebtedness ahead of it—that is, the first mortgages of $1,161,000, and then the demand note of $2,116,727.06, which, if foreclosed, would simply wipe this stock out of existence.

Q. Then, as I understand you, you have actually got to nurse this Memphis street railroad along to get your money out of it?

A. Yes, sir; that is my actual belief.

Q. The next item is one of cash on hand and in banks, aggregating $2,109,609.64, and I would ask you what that comprises.

A. That is made up of the actual cash that was in the
54 banks and on hand at the time, on the actual day of Mr. Billings' death, and of such items of interest then due, which were paid shortly after his death and ahead of the making up of this inventory. Of course, an inventory of this kind takes some time to prepare, and, while it is given as of the date of Mr. Billings' death, yet of necessity it is actually of a date some time later than that, and whereever interest has been paid in it has gone into this cash account, so that when I testify in regard to the face of notes and matters of that kind and to the cash account, why, I have taken in everything of value belonging to the estate.

Q. Including all interest due and paid up to the time of his death, as shown by this inventory?

A. Yes, sir.

Q. The next item is under the head of "notes deemed doubtful," and No. 1 is a note of Badenoch Brothers, dated April 29, 1895, for $31,743.75, signed by John J. Badenoch and Joseph Badenoch, Jr., payable on or before three years after date, interest paid to April 29, 1896. I will ask you what, in your opinion, that note was worth at the date of Mr. Billings' death.

A. I think the valuation of $15,000 is a very fair and sufficiently high estimate to place on that note.

Q. No. 2 is the note of John S. Zimmerman for $5,500, dated April 25, 1895. I will ask you what, in your opinion, that note was worth at the time of Mr. Billings' death.

A. The only security we have for that note is a trust deed, which is fully described in this inventory. Mr. Zimmerman himself is a salaried man, and he does not enjoy very good health, so that in valuing that note it is necessary to simply value the house, which is on Park avenue and in a row. At the time of Mr. Billings' death the uncertainties of the market made that note worth about from $3,000 to $3,500.

55 Q. It is returned here as worth $3,000.

A. Yes, sir; I think it is worth a little more than that.

Q. Item No. 3 is a note of Swan Brothers & Frank, dated May 5, 1887, for $50,000. What do you think was the value of that note at the time of Mr. Billings' death?

A. I know that the valuation of $15,000 placed on that is a very fair valuation, for the reason that I sought to get a bidder for our Ogallala Land & Cattle Company stock, which we hold by way of collateral, and the quotations that were given me were about 30 cents, but I could find no purchaser at any price. I place no value

on the other collaterals we hold, which is 300 shares of the Oriental Land & Iron Company, which is a Wisconsin institution, of which Lazerus Silverman was the president and active spirit.

Q. Lazerus has since failed, has he not?

A. He has failed twice.

Q. You value this note with which Lazerus is connected at $15,000?

A. Yes, sir; that is its full value.

Q. Item No. 4 is a receiver's certificate, apparently of the First National Bank of Kearney, Nebraska. What was the value of that certificate, or of that indebtedness of the First National Bank of Kearney, Nebraska, to Mr. Billings at the date of his death?

A. In answering that question I would like to answer a little more—that is, to consider the valuation of $8,000 which is placed on item No. 4 and also the valuation of $6,000 which is placed on item No. 5, making an aggregate of $14,000.

Q. That is $14,000 for items 4 and 5 under the heading of "Notes deemed doubtful"?

A. Yes, sir; considered together, they are worth, in my judgment, $14,000.

Q. Why do you consider them together?

56 A. Because I think the valuation of $8,000 on item No. 4 is a little too high and the valuation on No. 5 is a little too low, but they average up $14,000 together, in my judgment.

Q. Was Robertson, whose note is No. 5, connected with the First National Bank of Kearney, Nebraska?

A. Yes, sir; he was president of the bank—the First National Bank of Kearney—and I will say that the value of the remaining assets in the hands of the receiver of the First National Bank of Kearney have been very materially lessened by reason of the national bankruptcy act which was recently passed. A great many parties from whom it was hoped that we could get something to turn unto the receivership have announced their intention to take advantage of the bankruptcy act, and some of them have actually begun proceedings in bankruptcy, thereby reducing the value of the receivership. For that reason I am satisfied that the valuation of $14,000 is plenty high enough for items 4 and 5.

Q. This is the First National Bank of Kearney, Nebraska?

A. Yes, sir. The other assets held by that bank were farming lands, but most of them were mortgaged by prior mortgages, and the first mortgages were foreclosed, and neither the receivership nor any of the interests have seen fit to redeem, for the reason that the Nebraska law allows you only about — year, and after that year there is no redemption. Here it is fifteen months after sale. As I understand it, you can run a foreclosure there in a year or fifteen months, and have it all complete and ship-shape. In a great many of these matters we have preferred to allow foreclosures to go and preserve our redemption rights, but this case, the time being so short, the equities were allowed to go.

Q. Turning back to the Badenoch note, will you say why, in your opinion, it is worth less than the face of the amount left due?

A. That is for the reason that the only security we have for
57 the Badenoch item is real estate, and that real estate is made up of suburban properties scattered, a lot here and a lot there, the largest piece being a piece of miil property in the neighborhood of 64th and State street. The Badenochs were also indebted to the Home national bank, and when I say that the stock of the Home national bank is worth par, or probably will be, I had in mind that it would be necessary for us to get something out of this Badenoch real estate in order to get that value out. The valuation of $15,000 placed on this Badenoch note here of thirty-one thousand and odd comes under the same heading as this national bank item. It must be bourne in mind, in valuing the mill property of the Badenoch mill at 64th and State street, that all factory property in the vicinity of Chicago has to a certain extent been lessened in value by reason of an agreement among the railroads, which has existed for the last two or three years, giving little towns in the neighborhood of Chicago the same freight rates as Chicago. That being the case, the factories go where they can get, not only room, but a bonus for going there, and they get exactly the same shipping rates. For that reason our mill property, which at one time was valued very highly, has lost considerable in value. The raising of the switch tracks and other tracks of the railroad lines inside the city of Chicago has also lessened the value somewhat, making our property not so assessible as it was before.

Q. Are they raising the tracks in that neighborhood?

A. Yes, sir; they have raised them.

Q. Where was some more of this real estate of the Badenochs?

A. Some more of it was in Indiana. There were about twenty lots in Indiana City. I think the taxes for last year on the whole thing was $1.67—on the whole twenty lots.

Q. Where is Indiana City, if you know?

A. To tell you the truth, I don't know. It is just over the
58 line, not a great way from Hammond, Indiana—several miles from Hammond. I have never been there myself.

In there efforts to get as much cash as possible the Badenochs failed to make repairs on their property from time to time, and when it fell into our hands as security we found ourselves obliged to spend a good deal of money to put any value into the property at all. In one case there were seven small cottages at Wireton Park, and the neighbors actually removed one of the cottages bodily, and we never found so much as a stick of it.

Q. Where is Wireton Park?

A. That is down in the neighborhood of Blue island. There was a large wire mill put there, which is now occupied by the Gilbert & Bennett Wire Company, but for a number of years it was entirely vacant, and this was the situation at the time of Mr. Billings' death. In another case there was a piece of property on Vincennes avenue. The property was vacant, and the neighbors had removed all the doors, the mantel-piece and all the window sashes, the barn as far up as a man could reach and the outhouse, the fence and all the plumbing, and had started on the underpin-ing when we took up the first

mortgage existing on the place and had a receiver appointed and placed it in repair, and we now get about $16 a month for the entire house.

Q. From this brief résumé of yours, do you think the value placed on that Badenoch note of thirty-one thousand and odd dollars, and being, as you say, $15,000, was the full, fair value of that note at the time of Mr. Billings' death?

A. Yes, sir; I think that was its full value.

Q. It is liberal, is it?

A. Yes, sir; I think it is liberal.

Q. The next item that I call your attention to here is under the heading of "Notes, desperate." No. 1 is a note of L. F. Billings for $200, made in 1891. Mr. Billings is dead, as appears from the
59 inventory, and a claim for $232.73 was filed in the surrogate court of Oneida county, New York. Item No. 2 is eight notes of John R. Corbus, as described in the inventory. No. 3 is seven notes of William Whalen, dated January 21, 1889. No. 4 is a note of S. G. Wheeler, dated January 1, 1887, for $1,942.50. Had any of these notes any value whatever at the time of Mr. Billings' death, and being items 1, 2, 3, and 4 under the heading of "Notes, desperate," in the inventory?

A. No, sir; I think they were not of any value, unless it might be the notes of John R. Corbus. On reflection I am obliged to take that back, because he has since been appointed examiner for the United States Pension Department, but that was after Mr. McKinley's inauguration, in March, 1897, so that at the time of Mr. Billings death those notes were not worth anything, and are not worth much more now. We have not been able to collect anything on them since.

Q. You have tried, have you?

A. Yes, sir; we have tried. We can get a little something, but not enough to count. Some of those notes are outlawed.

Q. Under the heading of "desperate stocks" are two items. No. 1 is "certificates of assenting stock" of the Westinghouse Electric & Manufacturing Company of the par value of $50 a share; certificate No. 2713, for 60 shares. Item No. 2 is certificates of the capital stock of the Woman's Home for 11 shares of $100 each. Have those stocks any value?

A. The stock of the Woman's Home I consider of no value whatever. The stock of the Westinghouse Electric & Manufacturing Company had some value, but I never could find out what it was.

Q. You notice this does not appear to be the regular stock of the Westinghouse Electric & Manufacturing Company, but it is "assenting" stock.

A. Yes, sir; my understanding is that that "assenting" stock is classed with the common stock.

60 Q. Do you know of what State this is a corporation?

A. It is either New Jersey or New York. It is the Westinghouse Company, which has since been successful in some patent litigations, and it has now a little standing that it did not have at that time.

Q. Did it have any value at the time of Mr. Billings' death?

A. No tangible value. I was told by the secretary of the company that the market value of that stock was about $36 a share of $50, but I could not get any offer for it. We offered it for sale, but nobody wanted it at any price. We offered it for bidders, and couldn't get any.

Q. You tried to sell it?

A. Yes, sir.

Q. I notice here, under the heading of "Judgments, desperate," a judgment for costs rendered on the 20th of June, 1896, against one Charles D. F. Smith. Is that good for anything?

A. Absolutely worthless.

Q. And was that the condition of it at the time of Mr. Billings' death?

A. Yes, sir; and that condition has been persistently maintained ever since.

Q. The next is a judgment for $653.11 against one William N. Stone, rendered November 1, 1894. It appears here that the said Stone has since deceased, leaving no estate. What, in your opinion, would be the fair cash gold market value of that at the date of Mr. Billings' death, to wit, February 7th, 1897?

A. It was worth absolutely nothing. My impression is that at the time of his death Mr. Billings considered that as an item that at some time he would order stricken from the records, as he never expected to attempt even to realize on it.

Q. Even if it were good?

A. Yes, sir. He did not intend to press Mr. Stone for that, Mr. Stone being a cripple or a painter or something of that kind, and Mr. Billings declined to press him beyond a certain point.

61 Adjourned until 2.30 o'clock p. m., October 4th, 1898.

OCTOBER 4TH, 1898—2.30 o'clock p. m.

Present: Howard E. Leach, Esq., appraiser; James F. Meagher, Esq., of Messrs. Winston & Meagher, attorneys for the estate.

ROBERT L. BENSON, the witness on the stand when the adjournment was had on September 30th, 1898, was recalled, and his examination was resumed as follows by Appraiser Leach:

Q. Turning now, Mr. Benson, to the real estate owned by Mr. Billings at the time of his death, I will direct your attention to the first item, No. 1, under the heading of real estate (referring to inventory), being lot 21, in block 1, in Union Park addition to Chicago, and ask you to state what, in your opinion, was the fair cash market value of that piece of property at the date of Mr. Billings' death.

A. I think the valuation placed on all those three items—1, 2, and 3—is about correct—that is, $30,000. I figure that in this way: That corner piece, Nos. 2 to 12 North Sheldon street, on the northwest corner of Randolph street, is a piece 100 feet front on Randolph by 128.2 feet on Sheldon street to the alley.

Q. Which piece is that by number?

A. That is piece No. 1. I figure that 100 feet at $150 a front foot, or $15,000 for that piece. Piece No. 2 is Nos. 14 to 18 North Sheldon street, and is a piece 50 by 164.9 feet on its north and south boundaries; but its west boundary goes to a point, which
62 would make the depth of the exact center of that property 222½ feet. I figure that first 50 feet at $150, or $7,500—that is, piece No. 2. Piece No. 1 is entirely vacant, except for buildings in the way of sheds that belong to the tenant, while No. 2 is improved with a brick barn. The only value of that would be to a prospective purchaser, what its walls and foundations are worth, and I value that building at $7,500.

Q. The building?

A. Yes, sir; the buildings—all the buildings on that piece.

Q. On piece No. 2?

A. Yes, sir; on piece No. 2.

Q. Is that correct?

A. Well, one correction I will make in my testimony is that I have made a little error in grouping, lot No. 21 and lot No. 22, which are items 1 and 2 in the schedule, making up the property on the corner of Randolph.

Q. That is it?

A. Yes, sir; that is it. No. 3 in the schedule, being lots 23 and 24, make up the piece on which the barn stands, and it is the improvement on that piece that I refer to as being worth $7,500.

Q. Then what did you figure lots 23 and 24 worth?

A. Lots 23 and 24 I figure as being 50 feet at $150 a foot.

Q. Does that $7,500 estimate that you have given include the lots as well as the two buildings?

A. No, sir; I figure 100 feet at $150 a foot, or $15,000 for the Randolph Street piece.

Q. That is lots 1 and 2?

A. That is lots 21 and 22. Lots 23 and 24, I figured that as worth $150 a foot, 50 feet being $7,500, and, in addition to that, the buildings are $7,500, which, altogether, foots up the total of $30,000. Now, in giving an estimate on real-estate values throughout this entire schedule, there are a number of things that must be
63 borne in mind, among them being the question of title. Of course it is assumed, wherever you want to dispose of a piece of real estate, that the title is merchantable and in such shape that it can be handled very readily. Now, it is the unfortunate condition that nearly all the real estate comprised in this schedule—in fact, all that belonged to Mr. Billings—is in such shape as regards title that we could not give a title. We hope in time to find some way out of it, but there is no known date now at which we can say we can give a clear title to any of this property. We can use it for renting purposes and matters of that kind, but we cannot sell it to any one that is particular in regard to the title. Then there are other matters that have a bearing on the real-estate market. For instance, in February of 1897 was the depression resulting from the World's fair—and that had not entirely died away at the time of Mr. Billings' death—and the free-silver influence, which made things

very uncertain. Then, again, so far as our factory sites are concerned, the most of this property must be regarded as prospective factory sites, because very little of it is of no use as residence property. We meet the competition of all these little surrounding towns of which I spoke the other day. These little towns have the same rate on their freight that Chicago has, and in addition to that they offer a bonus to any one moving to their place, and all these matters tend to lessen our ability to dispose of West Side real estate, and the most of our property is West Side property, and east of Ashland avenue at that—that is, the greater portion of it.

Q. Is there any question of there being a difference in taxation in these little towns around Chicago and Chicago itself?

A. Yes, sir; the taxation out there is in some cases borne by the municipality or somebody else for several years.

Q. Where there are any such arrangements as that, what are the facts as to the taxes being higher or lower in those towns?

64 A. They are very much lower. Another thing: In disposing of pieces of property for factory use, switch tracks cut a great figure, and none of our property has any switching facilities at all. It is all inside property, remote from freight depots, all of which cuts considerable of a figure.

Q. I understand, then, that much of this property that you are about to describe is property that was residence property, but is no longer good residence property?

A. That is it.

Q. It is no longer available for that purpose?

A. That is it. Most of it is burdened—you couldn't say improved—with frame buildings that are really a detriment by reason of their extreme age. When you come to taking outside pieces, I wish you would call attention to it.

A. All right.

—. And again, a number of these pieces are in districts that are frequented by disreputable characters and things of that kind, so that you cannot do much in the way of renting.

Q. The property, much of it, as I take it, is in a sort of transition state?

A. Yes, sir; that is it.

Q. It is neither hay nor grass?

A. That is it. It is neither house property nor business property as yet; and here is another thing, and that is the deplorable condition of the West Side streets, particularly those running east and west, such as Lake street, Fulton street, and Randolph street, on which we have a good deal of property, and they are in distressing condition now and have been for a great many years, and it is almost impossible to get property-holders to do anything in front of their property.

Q. The next item is No. 4, being that part of the 52.95-acre tract which was set off to Henry Hubbard in partition among the

65 owners of the southwest quarter of section 8, township 39 north, range 14 east, of the third principal meridian, bounded and described as follows, to wit: Beginning at the point of intersec-

tion of the west line of Sheldon street with the south line of Fulton street, and running thence west along said south line of Fulton street $71\frac{1}{2}$ feet; thence south, parallel to said west line of Sheldon street, 100 feet; thence east, parallel to said south line of Fulton street, $71\frac{1}{2}$ feet, more or less, to the west line of Sheldon street, and thence north, along the west line of Sheldon street, 100 feet to the south line of Fulton street aforesaid, the place of beginning, said premises being also known as lots 1, 2, 3, and 4 in William L. Lee's subdivision of that part of lot 3, in the circuit court partition of the southwest quarter of section 8, township 39 north, range 14 east, of the third principal meridian, east and adjoining block 10, in the Union Park Second addition to Chicago, except the west 196.54 feet thereof. I see it is improved by five two-story and basement stone-front houses, unincumbered. What, in your opinion, was the estimated value of that property as of the date of Mr. Billings' death?

A. I think the estimated value, as it appears there in the schedule, $11,000, is amply high to cover the full value of that property, for this reason: The property stands on the southwest corner of Fulton and North Sheldon streets, being known as 52 to 60 North Sheldon street. It is 100 feet front on Sheldon street by $71\frac{1}{2}$ feet on Fulton, which is not a sufficient depth to allow of an alley in the rear, except by going on private property, which, of course, we cannot do, owing to the fact that the property is so shallow. I do not place a value at that time of over $100 a foot upon that property itself and property in that vicinity. That would be 71 feet at $100, say $7,100, and the five buildings, you can simply put them down as salvage, because they must be fifteen or
66 twenty years old. At the time of Mr. Billings' death he was very much exercised over the damage that was done to that property by reason of the northwest water tunnel, which was run directly under that property, within 200 feet of the surface, and they used such heavy charges of blasting powder or dynamite or something that they damaged that row of houses quite materially, and we have since began a suit for damages against the city; so that I only call those houses worth $700 or $800 apiece at the outside. That would run it up to about $3,900 for the buildings, $7,100 for the land, and $11,000 for the whole thing.

Q. This damage had occurred at the time of Mr. Billings' death, had it?

A. Yes, sir. As I said, at the time of his death he was much exercised over what had happened to those buildings, for the reason that they are veneered fronts of stone, and the jarring loosened the facing from the brick-work, and the stone steps were all out of plumb, and he had to fix them up. It is very difficult to keep tenants in those houses, because they have no back yards—well, not over ten feet deep—and no alley, so that all their coming in must be through the front; and they are so arranged, being the old style, that you can't throw them into flats, because they are not suitable. They don't allow room enough, and they don't allow you back stairs enough.

Q. The next item, being No. 5, is that part of lot 3 in the circuit

court partition of the southwest quarter of section 8, township 39 north, range 14 east, of the third principal meridian, in Cook county, Illinois, described as follows:

Beginning at the northwest corner of lot 1, in block 10, Union Park Second addition to Chicago, and running thence south along the east line of said lot 1 108 feet to the center of a proposed alley 16 feet wide; thence east, on a line parallel with the south line of Fulton street, 100 feet; thence north, on a line parallel with the
67 west line of Sheldon street, 108 feet to the south line of Fulton street; thence west, along the south line of Fulton street, 100 feet to the place of beginning. Title, fee-simple under and by virtue of a warranty deed from Nancy H. Cutting *et al.* to Albert M. Billings, dated February 23, 1887; recorded April 30, 1887, in the recorder's office of Cook county, Illinois, in Book 1950 of Records, page 486, improved by two two-story and basement brick houses, one altered into a three-flat building, numbers 455–457 Fulton street; also two two story frame houses, two flats, each numbers 459–461 Fulton street. In connection with the piece last described appears to be item No. 6, lot 1, in block 10, in Union Park Second addition to Chicago. This is improved by a two-story frame flat building. What, in your opinion, was the fair cash market value of those pieces at the time of Mr. Billings' death, Nos. 5 and 6 of the inventory?

A. I would consider those pieces simply at their reale-state frontage value. The houses I would not attach any importance or value to. I would simply call it 125 feet at $100 a foot, in round numbers. As a matter of fact, as to 455 to 461 Fulton street, which is item No. 5, the frontage is 100 by 108 feet, while item No. 6, being property No. 463 Fulton street, is 24 by 100 feet. So 125 feet, at $100 a foot, about makes the value of $12,500. The frame houses require a great deal of attention. They are extremely old, and I do not consider them of sufficient value even to put a new roof on. We simply take tar paper and lap it over like a great shingle, and tin that over, rather than to go to the expense of a new shingle roof, which would be $30 or $40. The brick house we have had some little luck with; but, in seeking to dispose of it, a purchaser would buy it for the land under it, so I do not attach any value to it at all. There is some little value there, of course, but you can't get it out, as it is of that nature.

Q. No. 7 is part of the 52.95 acres set off to Henry Hubbard
68 in the partition proceeding among the owners of the southwest quarter of section 8, township 39 north, range 14 east, of the third principal meridian, described as follows:

And being a part of lot 2, of assessor's division of part of lot 3, south of Lake street, in the circuit court partition of the southwest quarter of section, township, and range aforesaid, described as follows, to wit: Commencing at the northeast corner of said lot 2, running thence south, on the east line of said lot, 182½ feet to an alley; thence west, on the north line of said alley, 47.75 feet; thence north, and parallel with the east line of said lot, 182½ feet, more or less, to the south line of Lake street; thence east, on the south line of Lake

street, to the place of beginning, improved by an old two-story frame building. I will ask you the same question touching its value at the time of Mr. Billings' death with respect to that piece of property.

A. The value of the house on that property is nothing. The real estate, I should think, would be worth from $100 to $125 a front foot. The house number is 463 Lake street, and the dimensions of the lot are 47¾ by 182½ feet to an alley in the rear. There is an alley on part of the east side. The valuation placed in the schedule is $100 a front foot.

Q. You would raise that a little, would you?

A. Yes, sir; I would raise that a little by *the* reason of the extra depth of the lot.

Q. What would you put that at?

A. From 100 to $125 would be the value; somewhere in between there. That would add about $1,200 to that figure.

Q. Making it in the neighborhood of $6,000, then?

A. Yes, sir; but by reason of these questions of title and one thing and another it is very difficult to place a very exact value on it. At best these are merely estimates.

69 Q. No. 8 of the inventory is that part of the 52.95-acre tract set off to Henry Hubbard in partition among the owners of the southwest quarter of section 8, township 39 north, range 14 east, of the third principal meridian, bounded as follows: Beginning on the south line of said tract, at the southwest corner of the acre lot conveyed by William B. Ogden to W. F. Myrick, January 29, 1853; thence east along said south line 96 feet, thence north 6.57 chains, thence west 96 feet to W. F. Myrick's northwest corner, thence south 6.56 chains to the place of beginning, improved by a two-story brick building, two flats, and one-story brick barn and small sheds. I will ask you the same question with respect to that piece that I have asked in respect of the others.

A. Before answering that I would like to go back to the first two items. Those pieces—1, 2, and 3—were rented to the gas company at a fairly good rental, but the lease was of insufficient length to be figured as being of much value to the property—that is, it was a seven-year lease, and it expired in August of last year, and there was no telling at that time whether the lease would be renewed. It was not possible to tell who would be the managers of the gas company a year ahead, so it was not possible to estimate what would be the income by way of rents at that time. Now, item No 8 is property which would be known as street numbers 495 to 500 West Lake street. It has a south frontage, and vacant with the exception of one small brick building that adds nothing to the value of the property, and which is about to be demolished or gotten out of the way so that the vacant land can be rented, if possible. The frontage of that is 96 feet on Lake street by 353 feet deep, running clear through to Fulton street. By reason of its double frontage, in place of saying $100 a front foot, I would say $200 a front foot, which would give a valuation there of $19,200.

Q. You think the inventory is correct?

70 A. Yes, sir; I think the inventory is correct on that. There is the remains of an old brick barn there that we store lumber and things of that kind in, but it is a one-story affair and can be used for nothing except for old storage, the same as we use it.

Q. No. 9 is a piece commencing on the north line of Lake street, 14.12½ chains (equal to 932.14 feet) east of the west line of the south-west quarter of section 8, township 39 north, range 14 east, of the third principal meridian; thence east along said north line 1.52½ chains (equal to 100.54 feet); thence north 245 feet to the center line of a proposed alley (16 feet wide), which center line is to be 108 feet south of the south line of Fulton street; thence west along said center line to Fulton street 1.52½ chains (100.54 feet); thence south 245 feet to the place of beginning; also all right of said first party south of the north line of Lake street to the center line thereof, improved by a two-story house and barn. I will ask you the same question with respect to them.

A. The street numbers of that property would be known as 502 to 508 West Lake street. The frontage is 100½ feet by 245 feet, in round numbers. The value of that property rests entirely in the land, which, by reason of its depth—245 feet—I figure at $125 a front foot, making the schedule valuation there of $12,500 correct, in my judgment. The house on the lot, known as No. 504 West Lake street, was Mr. Billings' homestead, but it was a second-hand house when he bought it, away back in 1870 somewhere, and he built another roof on top of it, so there are two roofs there now, and the house hasn't any furnace heat in it, and, standing as it does, right it the middle of the property, it would be in the way of any improvement of the property. So there is no value except as a dwelling for the present occupant.

Q. You say your estimate of the value of all this property is in a measure influenced by the fact that it cannot be sold for a
71 good many years?

A. Yes, sir. I think the valuations I am placing on property are plenty high enough. I base my belief now on the fact that the piece of property on Fulton street, which is improved by a little cottage, which has a brick first story with a frame upper structure, occupies 24 feet by about 100 and some *off* feet—the street number would be 465 Fulton street—and we were offered $2,500, which is about $100 a foot, and we offered it for $3,000, and they didn't take it up; so they disregard the improvement on this property the same as we do.

Q. Have you taken into account the income derived from this property in getting at these values?

A. Yes, sir; to a certain extent; but I am compelled to say that the income derived from the property has a tendency to lower its value more than anything else, in my estimation, because it is very difficult to hold a tenant in there. They are small families there, and it is almost impossible to rent a whole house to one tenant. It is simply three or four room flats, and by reason of the Lake street elevated road having a depot at Sheldon street, it is difficult to rent them. A whole house, such as the Sheldon Street houses are, we

cannot rent half of the time. Some of them have been vacant ever since Mr. Billings died.

Q. The next item is No. 10, lot 7, in block 1, in Union Park addition to Chicago, improved by a two-story frame building, occupied as flats. Following that is item No. 11, lot 8, in block 1, in Union Park addition to Chicago, unimproved. What, in your opinion, was the value of those two pieces of ground as of the date of Mr. Billings' death?

A. That piece of property—there is one small building on it that is too old to be considered of any value at all. It has a north front and is triangular in shape. The house numbers are 509 to
72 513 West Lake street. The entire frontage—I should have to divide that up as you have it here (indicating inventory). Item No. 10, for instance, would be a piece of property 53.7 feet front by 122.4 feet deep on its eastern boundary by 76.6 feet on its western boundary. You would call that the hypothenuse of a triangle?

Q. Yes.

A. It is 70.3 feet. I would have to average the depth of that as being about 90 feet. The description of the other piece, which is No. 11 in the inventory, would be a triangular piece 90.2 feet by 76.6 feet on its eastern side, tapering to a point. The length of the hypothenuse would be 117.3 feet. I arrive at the valuation on that property by adding the frontage, 53.7 feet, and 90.2 feet together, which amounts to 143.9 feet, and dividing it by two to give the average depth, which would be 71.9 feet, which, by reason of its peculiar shape, I call $84 or $85 a front foot, which would figure very close to $6,000, which is the valuation placed in the schedule.

Q. Item No. 12 is lots 13 and 14, in block 10, Union Park Second addition to Chicago, improved by a two-story frame building used as flats. What was the value of that as of the time named?

A. The street numbers of that property would be 510 and 512 West Lake street and the frontage would be 48 by 237 feet deep. By reason of that frontage I would place a valuation of $125 a front foot or $6,000 for the whole piece. The frame building on the property is of no value, by reason of its age and physical condition.

Q. Item No. 13 is lot 2, in block 54, in Carpenter's addition to Chicago, improved by a two-story frame building. In connection with that is item No. 14, 20 feet in width off the east side of lot 3, in block 54, in Carpenter's addition to Chicago, being that portion of said lot 3 lying east of the alley north and south through said block, improved by an old two-story frame building. Item
73 No. 15 of the inventory is the west 20 feet of lot 3, in block 54, of Carpenter'- addition to Chicago, improved by a two-story frame building, unincumbered. What was the value of those items—13, 14, and 15—as of the date of Mr. Billings' death, in your opinion—the fair cash market value, such as it had?

A. The valuation of those three items, $18,000, as placed by the schedule, is correct, in my opinion. The property is 90 feet front, which I figure at $200 a front foot. A more full description of the

property would be as follows: 186 and 188 Washington boulevard, being 50 by 100 feet. There is no alley in the rear of this property or about the property at all. It is a north front and lies just west, say 100 feet west, of Halsted street, in the toughest kind of a neighborhood. 190 Washington boulevard is 20 by 100 feet, with an alley running along its west side. No. 192 Washington boulevard is 20 by 100 feet, with an alley running on its east side. The houses on this property, 186 to 192, are all old frame buildings, which have been there for twenty years at least and add no value at all to the property. There is one alley between 190 and 192, that is.

Q. $18,000 you think is the fair cash value of those three pieces?

A. Yes, sir; if anything, that valuation is a little high.

Q. The next item is No. 16, lots 4, 5, and 6, in the subdivision of lots 1 to 7 and 18, in block 3, of Union Park addition to Chicago, improved by two two-story and basement stone-front houses and brick barn. I will ask you the same question with respect to that piece of property.

A. I think the valuation placed on that piece of property in the schedule, $25,000, is the correct one. The property is known as 468 and 470 Washington boulevard, and it is 169.9 feet front—north front, by the way—by 150.3 feet deep on Bishop court, on the
74 southeast corner, to an alley in the rear. The two houses I simply figure as salvage, for the reason that they are of a style that there is absolutely no demand for now—that is, two-story and basement, requiring a great deal of running about, and the foundations are heavy stone, which is synonymous almost with dampness, and they are hardly suitable to be cut up into flats. I would simply say the houses are worth what you can get out of them in the way of brick and stone—about $1,000 apiece—$2,000 for the two. They are very old.

Q. Good houses in their day?

A. Yes, sir; good houses in their day, and good houses now for any one that lives east of Union park. I value the ground, say, 170 feet in round numbers, at $125 a front foot, making a total of $25,000.

Q. It is a double house, is it not?

A. Yes, sir; they are built together, and sit back from the street, and have always been operated together, and it would be a disadvantage if you wanted separate tenants.

Q. Why were they operated together?

A. One was occupied by C. K. G. Billings (Mr. A. M. Billings' son) and the other was occupied by his son-in-law, Mr. Ruddock.

Q. Mr. Ruddock, who married Mr. Billings' daughter?

A. Yes, sir.

Q. And the houses were operated together?

A. Yes, sir; the houses were operated together.

Q. Mr. C. K. G. Billings does not live in the house now?

A. No, sir; he nominally does, but I doubt if he has been there over night for a very long time. He keeps the place up more from sentimental reasons than anything else. During his mother's lifetime he does not care to move away from the neighborhood.

Q. As a matter of fact, he has not lived there in a long time, has he?

75 A. No, sir.

Q. The next item is No. 17, lots 1 and 2 and the east 25 feet of lot 3, in block 4, in Union Park addition to Chicago, improved by a two-story and cellar frame building. I will ask you the same question touching that piece of property. You may also state what it is.

A. That property is known as 482 Washington boulevard, the southwest corner of Bishop court. It is 100 feet front on Washington boulevard by 150.3 feet deep to an alley. I place a valuation of $150 a front foot on that as against $135 for the property across the street, for the reason that this property, 482 Washington boulevard, on which I place a valuation of $150 a front foot, has an east exposure, which always adds something to the value. The building stands right in the center of the property, and it would simply be in the way of an attempt to improve the whole piece. I think the valuation of $15,000, placed on that in the schedule, is correct. That house was occupied by one of the officers of the gas company, and the rental did not fix the value of the property at all. He fixed the houses up with hardwood floors inside and gas and furnace. He has a large family of seven or eight children, and the yard around it is very convenient for the children. Before he went in we tried to get $35 a month for it, and we had a tenant at $35, but she wouldn't pay her rent.

Q. What rental does it pay now?

A. I think it is $40 now.

Q. What are the taxes on that piece?

A. They would be $353.

Q. The next item is No. 18, lot 12, in John H. Kedzie's subdivision of block 58 of the Canal Trustees' subdivision of section 7, township 39 north, range 14 east, of the third principal meridian, unimproved. What, in your opinion, was the fair cash market value of those two pieces of property as of the date of Mr. Billings' death?

76 A. That property is known as No. 816 Washington boulevard. The frontage is 50 by 124.8 feet to an alley. It has a north frontage and lies just 200 or 300 feet east of Oakley avenue. On the opposite side of Oakley avenue there is a large religious institution there that occupies the full block running north, and they have a great big, high board fence, and, by reason of its being a north front and the uncertainty as to how much that institution will spread out and absorb, I do not think that property is worth more than $150 a front foot. It is 816 to 818. I would give it as being worth somewhere between $130 and $150 a front foot.

Q. How many feet?

A. 50 feet.

Q. The value given here (indicating inventory) is $6,250.00, and you would raise that some?

A. I would raise it a little—from $6,500 to in the neighborhood of $7,000.

Q. For those two pieces?

A. Yes, sir; that is, out near Oakley avenue.

Q. On which side of Oakley is that?

A. It is on the east side of Oakley avenue.

Q. That institution you speak of—does that affect the value?

A. Well, you know, religious institutions and hospitals—you must take them in view of the use they may throw it into. It is very much like a vacant lot. They may at any time throw the whole business on the market and put something on there that is of no value or what would be a detriment to neighborhood property.

Q. Item No. 20 is lot 6, in block 2, in Duncan's addition to the city of Chicago, improved by a frame church on brick and stone foundation. What is the value of that property, in your opinion, as of the date of Mr. Billings' death?

A. At the time of Mr. Billings' death, I think that property was worth about $150 a front foot. It is 50 feet by 125 feet to an
77 alley. It has an east front and is in the middle of the block between Monroe and Madison. The street numbers would be
89 and 91. It is improved—or encumbered—by a big old church building.

Q. On what street is it?

A. On Green street; and the neighborhood there was and has been up until a recent date a very disreputable one. The only use that property has got is for storage purposes, and the building, you cannot put any value on it at all.

Q. Is it a frame church?

A. Yes, sir; it is a frame church on a brick foundation.

Q. How old, in your opinion?

A. I have been in Chicago since 1872, and I believe I remember that church being there then.

Q. Is it used for religious purposes now?

A. Not now. It was at the time Mr. Billings died. It is used now for storage or warehouse purposes for furniture. We get $30 a month for it, from which we pay the taxes and all other expenses. The time was when property in that neighborhood was considered as worth all the way up to $500 a front foot. Mr. Clark, of the gas company, owns a block south of that that he will take $125 for. He requested me to get that.

Q. Your knowledge, then, is based on actual offers to sell?

A. Yes, sir; and there was another piece of property on Green street just a block north of that, next to the stable there. I think that is about eighty and some odd feet; that was sold to some one within the last two months for bakery purposes, right close to Washington boulevard, and the piece sold for $10,000—the whole eighty odd feet.

Q. $125 a foot?

A. Yes, sir; and that, mind you, is right around the corner from property that a little while ago I placed a valuation of $200 a
78 front foot on, simply because it is on the boulevard; that is 186 to 192 Washington boulevard.

Q. In making your estimate, I take it from what you say that you have investigated values and sales and offers?

A. Yes, sir; I have watched matters very closely because it was hoped we would find some mode of disposing of the property we hold, and I wanted to be posted on values so as to let them go if we could find a purchaser. We have not been able to find purchasers.

Q. That next item is No. 21, being lot 2, in block 5, in D. S. Lee's addition to Chicago, improved by a small brick office building only. I will ask you the same question with respect to that piece of property.

A. That property is known now as 1208 Milwaukee avenue. It is 25 by 117½ feet to an alley. That alley, as a matter of fact, amounts almost to an addition to the street frontage, because the property lies well up toward the sharp end of the triangle, and it goes through from Milwaukee avenue to Robey street; directly in rear is the elevated railroad. The little office building on there cost us $35 or $40, so that you cannot place any value on that for rents, and I value the property at $200 a front foot. That would be $5,000 for the lot.

Q. For the 25-foot lot?

A. Yes, sir; for the 25-foot lot. I put that value on it for the reason that right there, at that corner, Milwaukee avenue and Robey stree- and North avenue all come there in a bunch. If we could only dispose of it—if we could only give title—I could sell that lot for more than that now.

Q. The next is item No. 22, lot No. 12, containing 2,205 square feet, in Fairlawn. Is that a cemetery lot?

A. Yes, sir; a cemetery lot. It is the lot in which Mr. Billings' remains now lie.

79 Q. It is valued at $100?

A. I do not know how I can place a value on that lot. You cannot convey it to anybody without permission of the cemetery authorities. There are 2,205 square feet, and it cost Mr. Billings $1.00 a square foot, so if I place any value on it at all it would be probably higher than $100, but it is a sentimental value entirely, now that Mr. Billings' remains are there and those of Mrs. Dr. Frank Billings, his niece, and his daughter, Mrs. Ruddock. You cannot place any value upon the property. I was reading the deed over today. You cannot dispose of that property without the permission of the cemetery authorities; neither can you dispose of any of it less than the whole. So it would be necessary to take up the remains there. I confess I cannot appraise that property.

Q. Was it occupied at all at the time of Mr. Billings' death?

A. Yes, sir; his daughter's remains were in it and those of his niece. It would not be fair to call that an asset.

Q. The next item, No. 23, is lot 3, being the south 19 acres of the west half of the northwest quarter of section 18, township 40 north, range 14 east, of the third principal meridian, except streets, unimproved. What, in your opinion, was the estimated value of that at the time of Mr. Billings' death?

A. That property is 19 acres, less streets, say one acre for streets, which would be about 18 acres, which I figure worth about $2,000 an acre, or $36,000. The property lies between Montrose boulevard on the south, Western avenue on the west, Sunnyside avenue on the north, and Leavitt street on the east, from which must be deducted Lincoln avenue, which runs cornerwise through the northeast corner, deducting about the acre referred to. At the time of Mr. Billings' death that was used for a cabbage patch, and we got $100 a year for it. The tract is not subdivided at all and no improve-
80 ments of any kind on it. My recollection is that at the time of Mr. Billings' death the street car line which now runs on Montrose boulevard out to Dunning was not in operation. I think if we had been obliged to sell and could have sold at the time of Mr. Billings' death $2,000 would have been all we could have realized on it. I am satisfied of that.

Q. The next item is No. 24, being the south half of block 25 of Kinzie's addition to the city of Chicago. Item 25 is lot 1, in block 16, in Wolcott's addition to Chicago, both being unimproved. What, in your opinion, was the value of those two items, 24 and 25, as of the date of Mr. Billings' death?

A. Items 24 and 25 consist of 100 by 100 feet on the northwest corner of North State and Indiana streets; that 100 feet I consider worth $300 a front foot, making $30,000 for that piece at the time of Mr. Billings' death.

Q. That is Nos. 24 and 25?

A. Yes, sir; 24 and 25 together; 24 is 61 by 100 feet, which is the corner piece; 25 is 39 by 100 feet, making 100 by 100 feet.

Q. That is on the northwest corner of what?

A. On the northwest corner of North State street and Indiana street. That property on North State street is a little too near down town for an apartment house, and if it was a little bit differently located by a block it would be worth a good deal more money.

Q. Take item No. 26, the north half of the east half and the south half of the west half of block 73, in the Canal Trustees' subdivision of the west half of section 27, township 39 north, range 14 east, of the third principal meridian; unimproved. That property excepts a strip 30 feet in width and 52 in depth, conveyed by Albert M. Billings and wife to the Chicago and South Side Rapid Transit Company. Now, I will ask you what, in your opinion, was the value of that property at the time of Mr. Billings' death?

81 A. At the time of Mr. Billings' death I consider that property, the Wabash Avenue frontage being Nos. 2540 to 2548, 108.8 feet by 180.2 feet to an alley, as being worth $200 a front foot, or $20,000, and the other piece, which is the south half of the west half of block 73, being the northeast corner of 26th and State streets, 100 by 150 feet, less the piece 30 by 52 feet in the rear, as being worth $300 a front foot, or $30,000, making $50,000 for the two pieces. I would say that some value is made up from the prospective value that attaches to the property by reason of Mr. Billings having reserved the privilege of having an entrance cut through from the

elevated railroad station to whatever building he might put upon that property in the future.

Q. That is, provided it has not been foreclosed?

A. Yes, sir. Since Mr. Billings' death their foreclosure proceedings have been completed, and whether or not his right has been cut off I cannot say, because I have not investigated it.

Q. But the $50,000 covers and includes whatever that fact, if it exists, would give it?

A. Yes, sir. I do not think it would be worth quite that if he had not that right.

Q. The next item in the inventory is No. 27, being lot 1 (except the south 28 feet thereof) and the east 19 feet of lot 2 (except the south 28 feet thereof), in Lensenbarth's resubdivision of lot 1 (except the east 7 feet thereof), the south 169.6 feet of lot 2, and east 69 feet of the north 136.6 feet of lot 2 and the east 16 feet of the south 169.6 feet of lot 3, in Lensenbarth's subdivision of lot 36, of the School Trustees' subdivision of section 16, township 38 north, range 14 east, of the third principal meridian, improved by a frame house on stone foundations, containing about twenty rooms. State what, in your opinion, was the value of that piece of property at
82 the time of Mr. Billings' death, and also give a brief description of it, its uses and adaptability.

A. The value of that property in the schedule, $10,000, is correct, in my opinion. The property would be 565 67th street, on the southwest corner of Stewart avenue. The property is 63.32 feet on 67th street by 102 feet deep on Stewart avenue. Unfortunately the property has no alley in rear. The property originally belonged to Brayton Bushee, and he sold the alley, or rear portion, to a man who put up a little school-supply store there. Directly across the street, in the block east, there is the South Division high school, a public school building, and Mr. Bushee was allured by the price that this stationery man was paying him for the little piece, and he forgot to consider its bearing on a larger piece of property, and he built there, and the result is now that he has to deal with a piece of property—or at least we have—on which there is a large house, too large for any use, having no alley facilities. They are not allowed to put a garbage box in the street, and they pass over a piece of property that we have acquired the use of since Mr. Billings' death to get to the garbage box. It is not an attractive piece of property. For board-house uses it is a nice piece of property. The 63.32 feet I figure worth about $100 a foot at the time Mr. Billings died, and the house, I should say, in round numbers was worth $3,668, making about $10,000 for the whole property.

Q. The next items, Mr. Benson, cover certificates of sale. The first one is No. 1, being the interest of A. M. Billings in the note of A. J. Stone and Mary S. Stone, his wife, for $179,700, which was merged in a decree of foreclosure, as hereinafter described, and was secured by trust deed, dated March 1, 1894, conveying to Cornelius K. G. Billings, as trustee, the following-described lands and premises, situated in the county of Cook and State of Illinois, to wit:

Lots nineteen (19), twenty-five (25), twenty-six (26), twenty-
83 seven (27), twenty-eight (28), twenty-nine (29), and thirty-seven (37), in block two (2) of Ingham's subdivision of part of the southwest quarter of the southwest quarter of section twenty-five (25), township forty (40) north, range thirteen (13) east, of the third (3rd) principal meridian.

The north thirty (30) acres of the south sixty (60) acres of the east half of the southeast quarter of section seventeen (17), township forty (40) north, range thirteen (13) east, of the third (3rd) principal meridian.

That part of the southeast quarter of section thirty-three (33), township forty (40) north, range thirteen (13) east, of the third (3rd) principal meridian, described as follows:

Commencing four hundred forty-five (445) feet east of the northwest corner of the southeast quarter of said section, running thence south two hundred forty-five (245) feet, thence east six hundred ninety-six and four-tenths (696.4) feet to the center of Grand avenue, thence north sixty-one (61) degrees west along the center line of said Grand avenue five hundred eight (508) feet, more or less, to the north line of said southeast quarter of said section thirty-three (33), running thence west on the said north line of said quarter section two hundred fifty-one (251) feet, more or less, to the place of beginning, containing two and sixty-six-hundredths acres, more or less.

Lots twenty-eight (28) and twenty-nine (29), in McNeill's resubdivision of lots one (1) to nineteen (19) and twenty-eight (28) to thirty (30), both inclusive, in block five, in McNeill's subdivision of blocks six (6), seven (7), and eight (8), in Wright's addition to Chicago.

All of A. J. Stone's addition to Maywood, being a subdivision of lot one (1), except the north fifteen (15) acres thereof in the
84 partition of parts of sections three (3) and ten (10), township thirty-nine (39) north, range twelve (12) east, of the third principal meridian, except lots eight (8) to twelve (12), both inclusive, in block one (1); lots nineteen (19) and twenty (20), in block three (3); lot twelve (12) and lots seventeen (17) to twenty-one (21), both inclusive, in block four (4); lots four (4) to nine (9) and fourteen (14) to twenty (20), both inclusive, in block nine (9), and lots six (6) to twelve (12), both inclusive, in block ten (10).

The southwest quarter of the southwest quarter of section sixteen (16), township forty (40) north, range thirteen (13) east, of the third (3rd) principal meridian.

Lot B, in the partition of lots nine (9), ten (10), and eleven (11), in block one (1), in Union Park addition to Chicago, according to the map of said partition made by the commissioners appointed in case number one hundred sixteen thousand nine hundred sixty-two (116,962), in the superior court of Cook county, Illinois.

The east twenty and ten-twelfths ($20\frac{10}{12}$) feet of lot twelve (12), all of lot thirteen (13), and the west nine and nine-twelfths ($9\frac{9}{12}$) feet of lot fourteen (14), in McNeill's resubdivision of lots one (1) to nineteen (19) and twenty-eight (28) to thirty (30), both inclusive, in block

five (5), in McNeill's subdivision of blocks six (6), seven (7), and eight (8), in Wright's addition to Chicago.

The west forty (40) feet of lot three (3), the north thirty-five (35) feet of the west forty (40) feet of lot six (6), the east twenty (20) feet of lot four (4), and the north thirty-five (35) feet of the east twenty (20) feet of lot five (5), in block five (5) *in block* (5), of Wright's addition to Chicago.

Sublot eleven (11) in the subdivision of lots one (1) and two (2), in block eight (8), of Rockwell's addition to Chicago.

The east 40 feet of lot twenty-two (22), in block five (5), in
85 McNeill's subdivision of blocks six (6), seven (7), and eight (8), in Wright's addition to Chicago.

Outlot or block seven (7) except that part taken for the widening of Reuben street, now Ashland avenue, in the Canal Trustees' subdivision of the west half and the west half of the northeast quarter of section seventeen (17), township thirty-nine (39) north, range fourteen (14) east, of the third principal meridian, together with all buildings and improvements thereon and tenements and appurtenances thereto belonging.

Which trust deed was foreclosed by decree entered in the superior court of Cook county, Illinois, on the 3rd day of December, 1895. Said decree was appealed from, and subsequently and on the 8th day of June, 1897, was affirmed by the supreme court of Illinois. On March 17, 1896, Master in Chancery Wirt E. Humphrey issued a certificate of sale under said decree, certifying the sale to Albert M. Billings of all the hereinabove-described property, which certificate was unredeemed from at the date of the decease of the said Albert M. Billings. Thereafter and by deed dated January 22, 1898, the said Wirt E. Humphrey, master in chancery, executed and delivered his deed to the devisees under the last will and testament of Albert M. Billings, in and by which said master's deed he conveyed the premises in said trust deed and decree described; which master's deed was recorded in the recorder's office of Cook county, Illinois, on the 25th day of Jan'y, 1898, as document number 2,641,962.

The Home National Bank of Chicago and the Home Savings Bank of Chicago are equitable owners, in common with the devisees aforesaid, in and to the premises and property described in said deed. What should you say was the value of Mr. A. M. Billings' interest in that certificate of sale at the time of his death?

A. I would consider that entire property as worth $114,000.

Q. Do you mean the interest of A. M. Billings in it?

86 A. I mean the whole piece of property. Mr. Billings' interest in that certificate was that he owned about three-fourths of it; in round numbers, he owned 70 per cent. of it. The other 30 per cent. belonged to the Home savings bank and to the Home national bank; but in making up my estimate of the value of the national bank and the savings bank I used those assets. I took them into consideration among the assets belonging to those banks.

Q. What should you say Mr. Billings' interest in that certificate was at that time?

A. It would be 70 per cent. of $114,000.

Q. That would be $79,800, would it not?

A. Yes, sir. You will understand that these things have since floated around, so that really they have readjusted themselves, and $114,000 as the value of that certificate is correct.

Q. Yes; but at the date of Mr. Billings' death, what part of that certificate was owned by Mr. Billings?

A. 70 per cent.

Q. And the other 30 per cent. was owned by the Home savings bank and the Home national bank?

A. Yes, sir. In round numbers, his interest in that was only $80,000.

Q. The next item, No. 2, under the heading of "Certificates of sale," is three notes, each dated November 24th, 1890, for $4,000 each, payable on or before 3, 4, and 5 years after date respectively, with interest at 6 per cent. per annum, secured by a trust deed from Charles D. F. Smith and wife to C. K. G. Billings, trustee, conveying lot 16, in block 2, in Union Park addition to Chicago, in the southwest quarter of section 8, township 39 north, range 14 east, of the third principal meridian. A bill was filed to foreclose said trust deed May 14, 1894, in the circuit court of Cook county, Illinois, and a decree of sale was entered in said court March 19, 1895,
87 finding due the said A. M. Billings $16,037.98. An appeal from said decree was taken by said Smith to the appellate court and there affirmed by opinion filed January 22, 1896. An appeal therefrom was taken by said Smith to the supreme court of Illinois, February 6, 1896. Said decree was affirmed by the supreme court, by an opinion filed December 22, 1897, and is now, or was at the time of the filing of the inventory, pending on a petition for rehearing. What, in your opinion, was the value of Mr. A. M. Billings' interest in that certificate of sale or decree at the time of his death?

A. In placing a valuation on that property, which is known as 469 Washington boulevard, I would say that when I placed a valuation of, say, $200 a foot on the property as it stands now, with all the improvements, I placed a figure on it that is amply sufficient to cover any possible value that may exist by chance in the building. As a matter of fact, I do not think the building is worth much, if anything, although it is a very large building; may be 25 rooms in it. When we got hold of the property, or when it came to the point where we had to protect ourselves by reason of Mr. Smith's failure to do it, we had to take out the policies of insurance, and we found that the house was a veneered house.

Q. Brick veneer over wood?

A. Yes, sir; brick veneer over wood. It is a very old house, and Smith has added to it from time to time. He has added wings and stories, and raised up the roof, and put a story or two to it without adding properly to the heating facilities, so that he has really made the property of less value than it was before, except for a big boarding-house, and that is the use he makes of it now, and boarding-houses abound in the district east of Union park.

Q. That is the piece of property that you said you had bid in for $12,000, but offered to take $10,000 for it?

88 A. Yes, sir. I would like to go back to the Stone matter.

Q. Well, do so.

A. The only security we have for that item of A. J. Stone, $179,700, is the real estate which is more fully described in the schedule. Some of the property which is described in that schedule has been foreclosed by first-mortgage holders and has passed from us absolutely; so there is no value in them whatever. Those pieces are property known as the Chicago View hotel, on the corner of Madison and Ashland avenue- and Ogden avenue—at their intersection—that triangular piece on which the first mortgage was foreclosed and bid in by the Northwestern Mutual Life Insurance Company of Milwaukee for $90,800, and we didn't think it was worth that, and we allowed the property to go. The property number 431 Washington boulevard is A. J. Stone's homestead, and that is encumbered for $10,000, and it amounted at the time of Mr. Billings' death to about $12,000 or $13,000, with unpaid interest and taxes, and that was then in process of foreclosure and is yet, and we have not redeemed and do not intend to. The property 1102 Madison street is a piece of store property out there that Chandler foreclosed for about $6,000, which is about all it is worth, and we didn't redeem from that. The other pieces of property, many of them, lie in the district east of Union park, on Randolph and on Sheldon street-, in a district which is undesirable for residence purposes, and it is therefore speculative. Among the property is 266 lots at Maywood. We could not realize much, if anything, out of them at the time Mr. Billings died, for the reason that suburban property, of course, suffered the most, and this Maywood property is just outside the prohibition boundary of Maywood and is in Melrose. It is in the saloon district, which materially takes away from its value, and there are no improvements on the property except the grading of the streets.

89 Q. They are a constant source of expense to you, are they?

A. Yes, sir.

Q. Any income from them?

A. Yes, sir; we get, I think, $10 a year for the whole business for the right to cut the grass that grows on it. Among the property that is in the schedule is one piece of property near Dunning, making 30 acres, and another piece of 40 acres, which Mr. Stone and others put very high valuations upon, one piece being on the corner of Austin avenue and Irving Park boulevard, just inside the city limits—that is, the 40-acre piece—and the 30-acre piece is just across the street and just outside the city limits. It is too near Dunning to make it good residence property. The public institutions are there, and institutions for consumptives, and things of that kind, which are not desirable to have in a good residence neighborhood. I will add to the property that has since passed from our control, or which has since passed beyond us, the property Nos. 39, 41, and 43 Bryan place, which was heavily encumbered and foreclosed, and we did not think it worth the encumbrance and let it go. It has

been foreclosed by a party named Lutz, and he is now hunting around for somebody to take it off his hands. The piece next to that, 45 Bryan place, is clouded somewhat by reason of Mrs. Henrietta Snell having a life estate in it. This is also true of the property Nos. 424 and 426 Randolph street. As Mrs. Billings, the widow of Albert M., is fairly hale, she may live indefinitely. We cannot get that property, anyway.

Q. Now, Mr. Benson, I will ask you to state what experience you have had in handling real estate in Chicago, and for how long.

A. I have handled real estate in Chicago since July 1, 1889, all the property that was controlled by or in which the Home national and the Home savings bank of Chicago had any interest.

Q. By reason of making loans on such property?

A. Yes, sir; by reason of making loans on such property.

90 My habit was to look at the property myself—any property on which a loan or a valuation might be requested or wanted. I would look at the property myself and consult the persons as to what valuations were placed on their property by them, and I would learn if any sales had been recently had in the neighborhood, and whether the considerations were *bona fide*, which I would find in many instances was not the case. The parties would put it pretty well up to assist in selling it.

Q. Were there hundreds of instances of that kind during the period you have named?

A. Yes, sir; I should say fully hundreds—several hundreds.

Q. Your duty was to get a value on proposed loans to be made by the Home national bank or the Home savings bank?

A. Yes, sir; and more especially the value that could be realized if it was necessary to get the value out—not the value which might be secured by patiently waiting and studying all the conditions.

Q. State whether you had any experience in handling Mr. Billings' own property, as to rentals, etc.

A. Yes, sir; I had almost exclusive charge of that branch of his business for a number of years, the only exception to that being that Mrs. Billings herself would look to the collections of rents of properties in the immediate neighborhood of her homestead, as she seldom ever rented a piece of property without consulting me as to the desirability of the tenants, or something of that kind, or the price to be received, and so on.

Q. So that you can fairly say, I take it, that you have kept posted for the last ten years on the values of property in the vicinity of Chicago?

A. Yes, sir; in the vicinity of property that we have. Of course, in districts where we have no interest my attention was not called to them.

91 Q. And you feel that you know the fair cash selling price of the properties that you have given the values of in this examination?

A. Yes, sir; I think so.

Q. And the values you have given were the fair cash market values of these pieces of property, situated as they are and bur-

dened or not, as the case might be, in respect of the matter of title and of the situation and the circumstances surrounding each particular piece of property?

A. Yes, sir.

Q. State whether or not you have taken up each piece by yourself and examined into its value and surroundings and everything connected with it before you came upon the stand here to testify.

A. Yes, sir; I have done so.

Q. State what sort of an examination you have made; whether it was careful or otherwise.

A. It was exceedingly careful.

Q. State whether or not in the inventory from which you have testified, and which has been filed and upon which your testimony has been given, everything is comprised that was owned by Albert M. Billings in the State of Illinois at the time he died, February 7th, 1897.

A. Yes, sir; the schedule covers everything in the State of Illinois owned by Mr. Billings at the time of his death.

Q. When you say "schedule," I assume you mean inventory?

A. Inventory, I mean.

Q. And you have given the full, fair cash market value as of February 7th, 1897, at the time of the death of Albert M. Billings, of all of his property in the State of Illinois?

A. Yes, sir; to the best of my belief.

Q. You have covered everything?

A. I have covered everything.

92 Q. State what is the fact as to your being acquainted with Mr. Billings' property, the extent of it, the value of it, at that time.

A. I was well posted on the location and value of all of Mr. A. M. Billings' property at the time of his death.

Q. And all his personal property as well?

A. Yes, sir; all his personal property as well.

Q. And its value?

A. Yes, sir; and its value. My relations with Mr. Billings were those of a confidential nature. He regarded me, I am glad to say, very much in the light of a member of his household. He would call upon me at all hours of the day and night for assistance of various kinds, and I was in the habit of walking into his house unannounced, the same as I would if it was my own. I often accompanied him on his trips to Memphis and other places on his business trips. I may say I was treated more as a member of his family than as a business employee.

Adjourned.

93 On November 7th, 1898, at 2 o'clock p. m., the testimony of Mr. BENSON was resumed as follows:

Since last on the stand I have consulted with the appraisers and their counsel as to what will be the probable costs of administration, and have also secured the information desired by the appraisers.

The executors of the estate of Albert M. Billings will ask the pro-

bate court of Cook county to allow them for their costs, charges, and commissions in conducting this estate and handling it the sum of $420,000.00.

At the time of Mr. Billings' death the state of his affairs was wholly, one might say, within his own breast. He was a man of commanding personality, who relied entirely upon himself and his own judgment and consulted with no one, nor was he in the habit of telling any one what his investments were, nor the condition in which loans made by him were. The result was that at his death, which was very sudden, his executors were obliged to travel all over this country in conducting the affairs of his estate. As a matter of fact, they have been obliged to go and send to San Francisco and Los Angeles on the west and to the State of Vermont on the east. Mr. Billings had loaned sums which, with interest, aggregated upwards of two million dollars in the State of Tennessee, and at the date of his death the security for this large sum of money was, in the opinion of the executors and their counsel, precarious, to say the least. The result was they had to make very many trips to the city of Memphis, and it took them months to get the indebtedness owned in Memphis, Tennessee, put into shape where the principal of the debt was secured as well as could be done. They were obliged, also, to go or send repeatedly to New York State, and to Vermont, Louisiana, Mississippi, Wisconsin, Missouri, and to other States, with the purpose in view of securing loans made by Mr. Billings
94 in his lifetime in those States. Many of these loans had been made by Mr. Billings to old-time friends and acquaintances, in whom he had confidence and upon whom he relied as individuals more than upon the security they offered him. In many cases the loans made by him were secured merely by plain demand notes, without other security, and wherever it was possible these executors and their counsel have endeavored to secure the principal of these loans, so that the same would ultimately reach the persons entitled thereto under the will of Mr. Billings. I may say of my own knowledge that the executors have been engaged every day since the death of Mr. Billings and are still in the actual work of securing the estate against loss. As payments have been made to the estate they have had to invest and reinvest the same, and the time of two of the executors certainly has been constantly taken up in conducting the business and affairs of the estate. In addition to the costs, charges, and commissions of the executors, the costs of the probate court will aggregate, I think, at least $10,000.00, of which upwards of $8,000.00 has already been paid.

The widow, Augusta S. Billings, on the 20th day of December, 1897, filed in the probate court of Cook county a renunciation of the provisions made for by the last will and testament of her husband, Albert M. Billings, and subsequently the executors of the estate, on January 28th, 1898, filed their first annual account, which was approved and confirmed by the probate court, in and by which it appears that there was turned over to Augusta S. Billings as her distributive part of the estate under the renunciation filed by her in the probate court of Cook county, as is by the statute in such case

made and provided, the sum of $2,383,549.08. She has not as yet received the full amount due to her under said renunciation, but the executors expect to turn over what is due to her under the statute when they make their next and final account as executors.

95 When Mr. Billings died he left him surviving his son, Henry A. Billings, 61 years old in the month of September, 1898. Henry A. Billings is a legatee under the will of Albert M. Billings, which provides that he shall be paid annually the sum of $1,200.00 in monthly installments. Albert M. Billings, deceased, also left him surviving his son, Cornelius K. G. Billings, who was born September 17th, 1861, and his grandson, Albert M. Billings Ruddock, son of his daughtor, Sarah A. Billings, which grandson was born on January 13th, 1886. Sarah A. Billings, the daughter of Albert M. Billings, died prior to the death of her father. Cornelius K. G. Billings has had two children born to him, the eldest, Blanche Pauline Billings, a daughter, born June 25th, 1886, and Albert M. Billings, Jr., born November 15th, 1894. The name of the wife of Cornelius K. G. Billings is Blanche Elizabeth, aged 34 years on January 14th, 1898.

Harriet Myrick Farnsworth, a legatee under the will of Albert M. Billings, was born July 29th, 1835. The legacy of Harriet Myrick Farnsworth is the sum of $1,200.00 per annum during her life, to be paid in monthly installments. The said Harriet Myrick Farnsworth is now living.

Augusta S. Billings, the widow of Albert M. Billings, was born on the 19th day of April, 1822, and is now living. Her maiden name was Augusta S. Farnsworth, and she intermarried with said Albert M. Billings in the month of June, 1859, and lived with the said Albert M. Billings thereafter as his wife until the death of said Albert M. Billings, on, to wit, February 7th, 1897, on which date he was 82 years nine months and 16 days old.

The daughter of Albert M. and Augusta S. Farnsworth Billings, who was named Sarah Augusta, the mother of Albert M. Billings Ruddock, was born April 8th, 1860. She intermarried with Charles H. Ruddock in the month of September, 1884, and died on the 8th day of August, 1889, leaving her surviving her son, by her

96 husband, Charles H. Ruddock, the name of her son being Albert M. Billings Ruddock, who was born January 13th, 1886. Said Sarah Augusta Billings left her surviving no other child or descendants of a child than the said Albert M. Billings Ruddock.

97 EXHIBIT "C"

In the name of God amen. I Albert M. Billings, of the city of Chicago, in the county of Cook and State of Illinois, being of sound deposing mind and memory, do hereby make and publish this my last will and testament.

I give unto and bequeath to my beloved wife Augusta S. Billings for her use and benefit during her natural life (and at her death to be divided as is hereinafter set forth) my entire estate both real and personal wherever located, excepting such reservations as are hereinafter set forth and made.

I give and bequeath to my son Cornelius Kingsley Garrison Billings, lots five and six (and the buildings thereupon) in resubdivision of lots numbered one to seven and eighteen of block three Union Park addition to Chicago, State of Illinois, the same being the premises now occupied by him.

I also give and bequeath to my grandson Albert M. Billings Ruddock, lot numbered four (and the building thereupon) in the resubdivision of lots one to seven and eighteen of block three Union Park addition to Chicago, Illinois, the same being the premises now occupied by his father Charles H. Ruddock.

I also give and bequeath to my son Henry A. Billings, the sum of twelve hundred dollars ($1,200) per year to be paid to him in monthly installments of one hundred dollars ($100) each and every month of his natural life.

I also give and bequeath to my sister-in-law Harriet N. Farnsworth, the sum of twelve hundred dollars ($1,200) per year to be paid to her in monthly installments of one hundred dollars ($100) each and every month of her natural life.

I do also herein give and bequeath to my son Cornelius Kingsley Garrison Billings, and to my grandson Albert M. Billings Ruddock, to be held and owned by them at the death of my wife Augusta S. Billings as is hereinafter explained and set forth, all the
98 property and estate herein bequeathed to her my wife not otherwise disposed of by my said executors hereinafter named, in the manner following to wit: Two-thirds thereof to my son C. K. G. Billings and one-third thereof to my grandson Albert M. Billings Ruddock to be held and owned by them as above stated during their lifetime, and should my son C. K. G. Billings die not leaving a living child or children of his own issue, the property herein bequeathed to him shall revert and be held and owned by my grandchild Albert M. Billings Ruddock during his lifetime, and should my grandson Albert M. Billings Ruddock die not leaving a child or children of his own issue, then all the property and estate herein bequeathed to him shall revert and become the property and estate of my brother John D. Billings (should he be alive at that time) and my living nephews and nieces who shall be living at the time of the death of my said grandson, as aforesaid, said brother nieces and nephews to share and share alike in said estate.

I hereby make constitute and appoint, my dear wife Augusta S. Billings and my dear son Cornelius Kingsley Garrison Billings and my dear son-in-law Charles H. Ruddock, to be the sole executors of this my last will and testament.

It is my will that my said executors, be not required to give bonds for the performance of their duties under this my last will and testament revoking and annulling all other wills heretofore by me at any time given or made.

I do declare this to be my last will and testament.

In testimony whereof, I the said Albert M. Billings, do hereunto set my hand and affix my seal in the presence of the witnesses named below, this sixth (6th) day of October anno Domini, one thousand eight hundred and ninety (1890).

Dated at Chicago, in the county of Cook and State of Illinois.

Signed, sealed and delivered in the presence of the testator and in the presence of each other and at the request of the testator.

ALBERT M. BILLINGS. [SEAL.]

99 Witnesses:

WILLIAM M. VAN PELT,
3249 *Forest Ave.*
WILLIAM McDOUGALL,
4156 *Ellis Ave.*
FRANK P. SMITH,
356 *Fox St., Aurora, Ill.*

STATE OF ILLINOIS, } ss:
County of Cook, }

In the Probate Court of Cook County.

To the Honorable Christian C. Kohlsaat, judge of said court:

The undersigned, executrix and executors of the last will and testament of Albert M. Billings, deceased, respectfully submit to the court the following final account and report of their acts and doings, as such executrix and executors, from February 3rd, 1898, to February 15th, 1899:

"EXHIBIT D."

100 Augusta S. Billings, executrix; Cornelius K. G. Billings and Charles H. Ruddock, executors, of the last will and testament of Albert M. Billlings, deceased, in account with the estate of Albert M. Billings, deceased.

DR.

1898.			
Feb. 3.	To notes deemed good, as per first annual account		$1,888,964.68
	To bonds, as per first annual account		1,023,600
	To stocks, as per first annual account		410,000
	To cash on hand, as per first annual account		795,421.89
	To notes deemed doubtful, as per first annual account		44,509.46
	To new loans, as per first annual account		663,988.42
	To income on hand February 3, 1896, as per first annual account		105,513.72
	To cash income, February 3, 1898, to February 15, 1899		337,037.46
	To note income, February 3, 1898, to February 15, 1899		101,026.67
	To salvage on personal property		272.33
	To certificate No. 2713 of the assenting stock of the Westinghouse Electric & Manufacturing Company for 60 shares, of the par value of $50 per share, as per inventory, desperate stocks, estimated value		1,500
			$5,371,834.63

101	Forward.....		5,371,834.63
	To certificate No. 67, for six shares, and certificate No. 107, for five shares, of the capital stock of the Woman's Home, of the par value of $100 per share, as per inventory of desperate stocks.....		000
	To note of L. F. Billings for $200, as per inventory of notes desperate.....		000
	To eight notes of John R. Corbus, as per inventory of notes desperate.....		000
	To seven notes of William Whalen, as per inventory of notes desperate		000
	To one note of S. G. Wheeler, as per inventory of notes desperate.....		000
	To judgment for costs against Charles D. F. Smith, as per inventory of judgments desperate.....		000
	To judgment for $653.11 and costs against William M. Stone, as per inventory of judgments desperate		000
			$5,371,834.63

102 Augusta S. Billings, executrix; Cornelius K. G. Billings, and Charles H. Ruddock, executors, of the last will and testament of Albert M. Billings, deceased, in account with the estate of Albert M. Billings, deceased.

CR.

1899.			
	By distribution in kind to Augusta S. Billings, Cornelius K. G. Billings, and Charles H. Ruddock, as trustees of the estate of Albert M. Billings, deceased, appointed by the circuit court of Cook county, of notes deemed good, as per voucher attached hereto.....	$1,697,816.66	
	By distribution in kind to Augusta S. Billings, Cornelius K. G. Billings, and Charles H. Ruddock, as trustees of the estate of Albert M. Billings, deceased, appointed by the circuit court of Cook county, of bonds, as per voucher hereto attached	797,400	
	By distribution in kind to Augusta S. Billings, Cornelius K. G. Billings, and Charles H. Ruddock, as trustees of the estate of Albert M. Billings, deceased, appointed by the circuit court of Cook county, of stocks, as per voucher hereto attached..... ..	160,000	
	By cash delivered to Augusta S. Billings, Cornelius K. G. Billings, and Charles H. Ruddock, as trustees of the estate of Albert M.		

	Billings, deceased, appointed by the circuit court of Cook county, as per voucher hereto attached.....	793,262.21
	By distribution in kind to Augusta S. Billings, Cornelius K. G. Billings, and Charles H. Ruddock, as trustees of the estate of Albert M. Billings, deceased, appointed by the circuit court of Cook county, of notes deemed doubtful, as per voucher attached hereto...	14,509.46
103	By distribution in kind to Augusta S. Billings, Cornelius K. G. Billings, and Charles H. Ruddock, as trustees of the estate of Albert M. Billings, deceased, appointed by the circuit court of Cook county, of new loans, as per voucher hereto attached.....	454,134.47
	By distribution in kind to Augusta S. Billings, Cornelius K. G. Billings, and Charles H. Ruddock, as trustees of the estate of Albert M. Billings, deceased, appointed by the circuit court of Cook county, of new bonds, as per voucher hereto attached.....	122,600
	By distribution in kind to Augusta S. Billings, Cornelius K. G. Billings, and Charles H. Ruddock, as trustees of the estate of Albert M. Billings, deceased, appointed by the circuit court of Cook county, of new stocks, as per voucher hereto attached.....	3,120
	By executrix and executors' fees, including counsel fees, as per voucher hereto attached.	420,000
	By expenses of administration, including rents, salaries, special personal property tax, auditing fees, etc., etc.	8,000.73
	By legal disbursements, including inheritance tax, Kings county, New York, and costs of administration	8,121.56
	By legacies paid to date, as per vouchers hereto attached.....	2,600
	By credit amended inventory, *re* Ruddock notes.....	8,325
	By errata in first annual account, as set forth in final report.....	200
104	By partial distribution of income to Cornelius K. G. Billings under the last will and testament of Albert M. Billings, deceased, as per vouchers hereto attached.....	244,666.66
	By partial distribution of income to Albert M. Billings Ruddock under the last will and testament of Albert M. Billings, deceased, as per vouchers of Charles H. Ruddock, guardian, hereto attached.....	122,333.34

	By cash income delivered to Augusta S. Billings, Cornelius K. G. Billings, and Charles H. Ruddock, as trustees of the estate of Albert M. Billings, deceased, appointed by the circuit court of Cook county, as per voucher attached hereto.....	75,551.19
	By distribution in kind to Augusta S. Billings, Cornelius K. G. Billings, and Charles H. Ruddock, as trustees of the estate of Albert M. Billings, deceased, appointed by the circuit court of Cook county, of note income, as per voucher attached.....	101,026.67
	By real estate held as personal property, under declarations of trust, in trust for Augusta S. Billings, Cornelius K. G. Billings, and Charles H. Ruddock, as trustees of the estate of Albert M. Billings, deceased, appointed by the circuit court of Cook county, as per receipt hereto attached.....	277,041.28
	By final distribution to Augusta S. Billings, as her distributive share in said estate, as the widow of Albert M. Billings, as per receipt hereto attached.....	59,625.41
105	By distribution in kind to Augusta S. Billings, Cornelius K. G. Billings, and Charles H. Ruddock, as trustees of the estate of Albert M. Billings, deceased, appointed by the circuit court of Cook county, of certificate No. 2713 of the assenting stock of the Westinghouse Electric & Manufacturing Company, for 60 shares of the par value of $50 per share, as per inventory — desperate stock, as per voucher hereto attached.....	1,500
	By distribution in kind to Augusta S. Billings, Cornelius K. G. Billings, and Charles H. Ruddock, as trustees of the estate of Albert M. Billings, deceased, appointed by the circuit court of Cook county, of certificate No. 67, for six shares, and certificate No. 107, for five shares, of the capital stock of the Woman's Home, of the par value of $100, as per inventory of desperate stocks, as per voucher hereto attached	000
	By distribution in kind to Augusta S. Billings, Cornelius K. G. Billings, and Charles H. Ruddock, as trustees of the estate of Albert M. Billings, deceased, appointed by the circuit court of Cook county, of note of L. F. Billings for $200, as per inventory of notes desperate, as per voucher hereto attached ..	000

	By distribution in kind to Augusta S. Billings, Cornelius K. G. Billings, and Charles H. Ruddock, as trustees of the estate of Albert M. Billings, deceased, appointed by the circuit court of Cook county, of eight notes of John R. Corbus, as per inventory of notes desperate, as per voucher hereto attached..	000
106	By distribution in kind to Augusta S. Billings, Cornelius K. G. Billings, and Charles H. Ruddock, as trustees of the estate of Albert M. Billings, deceased, appointed by the circuit court of Cook county, of seven notes of William Whalen, as per inventory of notes desperate, as per voucher hereto attached.....	000
	By distribution in kind to Augusta S. Billings, Cornelius K. G. Billings, and Charles H. Ruddock, as trustees of the estate of Albert M. Billings, deceased, appointed by the circuit court of Cook county, of one note of S. G. Wheeler, as per inventory of notes desperate, as per voucher hereto attached...	000
	By assignment of judgment for costs against Charles D. F. Smith to Augusta S. Billings, Cornelius K. *K.* Billings, and Charles H. Ruddock, as trustees under the last will and testament of Albert M. Billings, deceased, appointed by the circuit court of Cook county.....	000
	By total disbursements.....	$5,371,834.63
	Balance on hand.....	000

In witness whereof we have each of us hereunto set our hands and seals this 23rd day of February, A. D. 1899.

AUGUSTA S. BILLINGS, [SEAL.]
CORNELIUS K. G. BILLINGS, [SEAL.]
CHARLES H. RUDDOCK, [SEAL.]

Executrix and Executors of the Last Will and Testament of Albert M. Billings, Deceased.

107 STATE OF ILLINOIS, } *ss:*
County of Cook, }

Augusta S. Billings and Cornelius K. G. Billings, being each first duly sworn, on oath state that they are respectively executrix and executor of the last will and testament of Albert M. Billings, deceased, and that the foregoing final account of receipts and disbursements by each of them subscribed is true and correct.

AUGUSTA S. BILLINGS.
CORNELIUS K. G. BILLINGS.

Subscribed and sworn to before me this 23rd day of February, A. D. 1899.

[L. S.] A. F. BORDWELL,
Notary Public.

108 In the Matter of the Estate of ALBERT M. BILLINGS, Deceased.

CHICAGO, *February 23rd*, 1899.

Received of Augusta S. Billings, executrix; Cornelius K. G. Billings and Charles H. Ruddock, executors, of the last will and testament of Albert M. Billings, deceased, as trustees of the estate of Albert M. Billings, deceased, appointed by decree of the circuit court of Cook county, Illinois—

Notes deemed good, of the value of	$1,697,816.66
Bonds of the value of	797,400
Stocks of the value of	160,000
Cash	793,262.21
Notes, doubtful, of the estimated value of	14,509.46
New loans of the value of	454,134.47
New bonds of the value of	122,600.00
New stocks of the value of	3,120
Cash income	75,551.18
Note income of the estimated value of	101,026.67
Declarations of trust of real estate, held as personal property in trust for us as trustees, etc	277,041.28
Certificate No. 2713 of the assenting stock of the Westinghouse Electric & Manufacturing Company for 60 shares, of the par value of $50 per share, estimated value	1,500
Certificate No. 67, for six shares, and certificate No. 107, for five shares, of the capital stock of the Woman's Home, of the par value of $100 per share	000
Note of L. F. Billings for $200	000
Eight notes of John R. Corbus	000
Seven notes of William Whalen	000
One note of S. G. Wheeler	000
Assignment of judgment for costs against Charles D. F. Smith	000

109 In witness whereof we and each of us have hereunto set our hands and seals, at Chicago, the day and year first above written.

AUGUSTA S. BILLINGS,
CORNELIUS K. G. BILLINGS,
CHARLES H. RUDDOCK,
Trustees of the Estate of Albert M. Billings, Deceased.

110 *Receipt.*

In the Matter of the Estate of ALBERT M. BILLINGS, Deceased.

CHICAGO, ILLINOIS, *February 7th*, 1899.

Received of Augusta S. Billings, executrix, and Cornelius K. G. Billings and Charles H. Ruddock, executors, of the last will and testament of Albert M. Billings, deceased, on account of my distributive share of said estate, as widow of the said Albert M. Billings, deceased—

Note of the value of	$27,757.65
Cash	31,867.76
	$59,625.41

In witness whereof I have hereunto set my hand and seal, at Chicago, the day and year first above written.

AUGUSTA S. BILLINGS,
Widow of Albert M. Billings, Deceased.

111 *First Annual Report of Augusta S. Billings, Cornelius K. G. Billings, and Charles H. Ruddock, Executrix and Executors of the Last Will and Testament of Albert M. Billings, Deceased.*

112 STATE OF ILLINOIS, } ss:
County of Cook, }

In the Probate Court of Cook County.

To the Honorable Christian C. Kohlsaat, judge of said court:

The undersigned, executrix and executors of the last will and testament of Albert M. Billings, deceased, respectfully submit to the court the following report of their acts and doings, as such executrix and executors, from February 15th, 1897, to February 3rd, 1898:

113 Augusta S. Billings, executrix; Cornelius K. G. Billings and Charles H. Ruddock, executors, of the last will and testament of Albert M. Billings, deceased, in account with the estate of Albert M. Billings, deceased.

DR.

1897.		
Feb. 15.	To notes deemed good, as per inventory	$2,863,197.09
	To bonds, as per inventory	1,584,200.00
	To stocks, as per inventory	526,133.33
	To cash on hand, as per inventory	2,109,609.64
	To notes deemed doubtful, as per inventory	47,000.00
	To interest, dividends, rents, rebates, etc., accuring up to February 6, 1897	54,182.85
	To interest, dividends, rebates, etc., accruing from February 6, 1897, to February 3, 1898	158,270.57
	To collection on new investments	100.00
		$7,342,693.48

114 Augusta S. Billings, executrix; Cornelius K. G. Billings and Charles H. Ruddock, executors, of the last will and testament of Albert M. Billings, deceased, in account with the estate of Albert Billings, deceased.

Cr.

February 3, 1898.

By notes deemed good:			
1. On hand	$1,888,964.68		
2. Set aside to Augusta S. Billings as a portion of her distributive share in said estate, as per receipt hereto attached		$955,575.69	
Total			$2,844,540.37
By bonds:			
1. On hand	1,023,600.00		
2. Set aside to Augusta S. Billings as a portion of her distributive share in said estate, as per receipt hereto attached		560,600.00	
Total			1,584,200.00
115 By stocks:			
1. On hand	410,000.00		
2. Set aside to Augusta S. Billings as a portion of her distributive share in said estate, as per receipt hereto attached		111,133.33	
116 Total			521,133.33
By cash:			
1. On hand	795,421.89		
2. Set aside to Augusta S. Billings as a portion of her distributive share in said estate, as per receipt hereto attached		703,483.21	
Total			1,498,905.10
By notes deemed doubtful:			
On hand	44,509.46		
Total			44,509.46
By new loans and investments:			
On hand	663,988.42		
Total			663,988.42
By miscellaneous expenses, including funeral expenses, contribution to monument for Ford, rental of vault boxes, medical attendance, etc., etc.			2,383.45
By legacies paid to date, as per voucher attached			2,200.00
117 By expenses of administration:			
1. Probate court costs, as per voucher attached	$7,587.30		
2. Expenses of litigation, being court costs, travelling expenses, telegrams, etc., etc.	1,905.48		
Total			9,492.78

By interest, dividends, rebates, etc., accruing from February 6, 1897, to February 3, 1898:			
1. On hand	105,513.72		
2. Set aside to Augusta S. Billings as her distributive share in the income of said estate, as per voucher hereto attached		52,756.85	
Total			158,270.57
By widow's award, as per voucher attached			13,070.00
Total	$4,931,998.17	$2,383,549.08	$7,342,693.48

118 *Recapitulation.*

Grand total received	$7,342,693.48
Grand total disbursed	2,410,695.31
Grand total on hand	4,931,998.17

In witness whereof we have each of us hereunto set our hands and seals this third day of February, A. D. 1898.

AUGUSTA S. BILLINGS,
CORNELIUS K. G. BILLINGS,
CHARLES H. RUDDOCK,
Executrix and Executors of the Last Will and Testament of Albert M. Billings, Deceased.

119 STATE OF ILLINOIS, } ss:
County of Cook, }

Augusta S. Billings and Cornelius K. G. Billings, being each first duly sworn, on oath state that they are respectively executrix and executors of the last will and testament of Albert M. Billings, deceased, and that the foregoing account of receipts and disbursements by each of them subscribed is true and correct.

AUGUSTA S. BILLINGS.
CORNELIUS K. G. BILLINGS.

Subscribed and sworn to before me this 8th day of February, 1898.

EDWARD S. WHITNEY,
Notary Public. [L. S.]

120 STATE OF CALIFORNIA, } ss:
County of Los Angeles, }

Charles H. Ruddock, being first duly sworn, on oath states that he is one of the executors of the last will and testament of Albert M. Billings, deceased, and that the foregoing account of receipts and disbursements by him subscribed is true and correct.

CHARLES H. RUDDOCK.

Subscribed and sworn to before me this 17th day of February 1898.

E. V. BAKER, [L. S.]
Notary Public — and for Los Angeles County, California.

Approved in open court Feb. 28, 1898.

KOHLSAAT,
Probate Judge of Cook County, Illinois.

121 STATE OF ILLINOIS, } ss:
County of Cook, }

Be it remembered that on the twenty-eight- day of February, A. D. 1898, the same being one of the days of the February term, 1898, of the probate court of Cook county—present thereat, Honorable Christian C. Kohlsaat, judge; James Pease, sheriff; Abijah O. Cooper, clerk—the following, among other, proceedings were by and before said court had and entered of record, to wit:

In the Matter of the Estate of ALBERT M. BILLINGS, Deceased.

This day came Augusta S. Billings, widow of Albert M. Billings, deceased, and presented to the court and filed herein her written relinquishment of her right to the specific article set apart for her in the appraisers' estimate of her award out of the estate of her deceased husband, and her election to receive in lieu thereof the amount of said award in money.

This day came Augusta S. Billings, Cornelius K. G. Billings, and Charles H. Ruddock, executors of the last will and testament of Albert M. Billings, deceased, and presented to the court a first account with said estate, showing receipts amounting to $7,342,693.48 and disbursements, including the sum of $2,330,792.23 paid to the widow of said decedent on account of her distributive share in said estate, the sum of $52,756.82 paid to the widow of said decedent in full of her distributive share of the income of said estate, and the sum of $13,070.00 paid to the widow of said decedent in full of her award in said estate, amounting to the sum of $2,410,695.31, leaving a balance due said estate amounting to $4,931,998.17, and the court, having examined said first account, which does not go into details of collections or disbursements by said executor, and on hearing had, said account is approved except as to question
122 of investments, and the court reserves the right to require said executors to present and itemized account at final accounting.

(Endorsed on back of same:)

STATE OF ILLINOIS, } ss:
County of Cook, }

I, James Reddick, clerk of the probate court of Cook county, in the State aforesaid, do hereby certify that the within is a true transcript of the proceedings had before said court in the matter of the

estate of Albert M. Billings, deceased, entered herein on the 28th day of Feb'y, 1898.

In witness whereof I have hereunto set my hand and affixed the seal of said probate court, at Chicago, in said county, this — day of May, A. D. 1899.

(Signed) JAMES REDDICK, *Clerk.*

Probate court of Cook county. Estate of Albert M. Billings, dec'd. Certified copy of proceedings and order of court. Entered Feb'y 28, 1898. (Signed) Abijah O. Cooper, clerk.

123 *Clerk's Certificate.*

STATE OF ILLINOIS, } *ss:*
County of Cook, }

I, James Reddick, clerk of the probate court of Cook county and the keeper of the records and files thereof, in the State aforesaid, do hereby certify the annexed and foregoing to be a true and correct copy of the renunciation of Augusta S. Billings, filed on the 20th day of December, A. D. 1897; order of court entered herein on the 20th day of December, A. D. 1897; annual account approved on the 28th day of February, A. D. 1898, and order of court entered herein on the 28th day of February, 1898, in the matter of the estate of Albert M. Billings, deceased, as appears from the originals on file and from the records of the probate court in my office.

In witness whereof I have hereunto set my hand and [SEAL.] affixed the seal of said probate court, at my office, in the city of Chicago, in said county, this 18th day of May, A. D. 1899.

(Signed) JAMES REDDICK,
Clerk of the Probate Court.

(10 cent revenue stamp.)

124 STATE OF ILLINOIS, } *ss:*
County of Cook, }

In the Probate Court of said County.

In the Matter of the Estate of ALBERT M. BILLINGS, Deceased.

To the Honorable Christian C. Kohlsaat, judge of said probate court:

I, Augusta S. Billings, surviving wife of Albert M. Billings, late of the county of Cook and State of Illinois, deceased, do hereby renounce and quit all claim to the benefit of any devise — other provision made to me by the last will and testament of the said Albert M. Billings, deceased, and I do elect to take in lieu thereof my dower and legal share to which I am entitled, as widow of the said Albert M. Billings, in the estate of the said Albert M. Billings.

Dated Chicago, Illinois, November 15th, 1897.

AUGUSTA S. BILLINGS. [SEAL.]

Executed in the presence of—
ROBERT L. BENSON.

Filed Dec. 20, 1897.
(Signed) ABIJAH O. COOPER, *Clerk.*

EXHIBIT F.

125 STATE OF ILLINOIS, } ss:
County of Cook, }

Be it remembered that on the twentieth day of December, A. D. 1897, the same being one of the days of the December term, 1897, of the probate court of Cook county—present thereat, Honorable Christian C. Kohlsaat, judge; James Pease, sheriff; Abijah O. Cooper, clerk—the following, among other, proceedings were by and before said court had and entered of record, to wit:

In the Matter of the Estate of ALBERT M. BILLINGS, Deceased.

This day came Augusta S. Billings, surviving wife of Albert M. Billings, deceased, and presented to the court her written renunciation of all claims to the benefit of any devise or bequest made to her by the last will and testament of said Albert M. Billings, deceased, and her election to take in lieu thereof her dower and legal share of said estate; whereupon it is ordered by the court that said written renunciation and election be filed and spread of record in the miscellaneous documentary record of this court.

Endorsed.

STATE OF ILLINOIS, } ss:
County of Cook, }

I, James Reddick, clerk of the probate court of Cook county, in the State aforesaid, do hereby certify that the within is a true transcript of the proceedings had before said court in the matter of the estate of Albert M. Billings, deceased, entered herein on the 20th day of December, 1897.

126 In witness whereof I have hereunto set my hand — affixed the seal of said probate court, at Chicago, in said county, this 18th day of May, A. D. 1899.
(Signed) JAMES REDDICK, *Clerk.*

Probate court of Cook county. Estate of Albert M. Billings, dec'd. Certified copy of proceedings and order of court. Entered Dec. 20, 1897. (Signed) Abijah O. Cooper, clerk.

Be it further remembered that afterwards and on, to wit, the 24th day of August, 1899, said Orrin N. Carter, county judge of the county of Cook and State of Illinois, made and entered a certain order in the matter of the estate of Albert M. Billings, deceased; which said order is in the words and figures as follows, to wit:

127 STATE OF ILLINOIS, } ss:
County of Cook, }

Before the Hon. Orrin N. Carter, county judge of Cook county.

In the Matter of the Estate of ALBERT M. BILLINGS, Deceased.

Upon the report of Howard E. Leach, the appraiser heretofore duly appointed to appraise the value of the property of the estate of said decedent subject to taxation under and pursuant to the statutes of this State relating to the taxation of gifts, legacies, and inheritances, this day presented and read, it appearing that said decedent, Albert M. Billings, died on the seventh day of February, A. D. 1897, seized of property subject to taxation pursuant to said statutes, and that due notice of the time and place of said appraisement was duly given to all persons known to have or claim any interest in said property and to such persons as were by order of the county judge directed; and it further appearing that the said Howard E. Leach, appraiser, has appraised the said property of said estate at its fair market value—

It is therefore ordered that the said report of appraisement be, and the same is hereby, approved, and that the said report, together with the depositions of witnesses and exhibits in said estate taken and returned herein, be forthwith filed in the office of the clerk of the county court of Cook county; and

It is further ordered upon said report that the cash value of the several estates, annuities, and life estates or terms of years growing out of the said estate of Albert M. Billings, deceased, subject to taxation under said statutes and the tax to which the same are severally liable be, and the same are hereby, assessed and fixed as follows:

Beneficiary, relationship, and description of property.	Appraised value.	Exemptions.	Cash value of estate.	Tax.
Augusta S. Billings, widow of testator:				
Widow's award..... $13,070.00				
Dower..... 69,266.70				
⅓ of personalty.....2,280,815.05				
	$2,363,151.75	$20,000	$2,343,151.75	$23,431.52
Henry A Billings, son:				
Income for life of $1,200 per year.....	13,005.24	20,000	*	*
Harriet M. Farnsworth, stranger:				
Income for life of $1,200 per year.....	12,168.00	*	12,168.00	486.72
Cornelius K. G. Billings, son:				
Specific devise of realty..... 30,000.00				
Life interest in ⅓ of residue and remainder.....2,472,118.75				
	2,502,118.75	20,000	2,482,118.75	24,821.18
Albert M. Billings Ruddock, grandson:				
Specific devise of realty..... 16,000.00				
Life interest in ⅓ of residue and remainder.....1,408,374.77				
	1,424,374.77	20,000	1,404,374.77	14,043.74
				$62,763.16

And it appearing from said report that by the terms of the last will and testament of said decedent an estate in remainder of the value of $846,584.70 is not yet vested, it being provided that in case testator's son, C. K. G. Billings, who is still living, die not leaving a living child or children of his own issue the property bequeathed to him for life (the remainder therein being at the time of testator's death of the value of $846,584.70) shall revert to and be held and owned by testator's grandson, Albert M. Billings Ruddock, during his lifetime, it is therefore further ordered that the tax thereon be, and the same hereby is, postponed until said estate of $846,584.70 shall have become vested.

And it further appearing from said report that a further estate in remainder of the value of $250,976.95 is not yet vested, it being provided by said last will and testament that in case testator's grandson, Albert M. Billings Ruddock, who is still living, die not leaving a child or children of his own issue, then the property bequeathed to him for life (the remainder therein being at the time of testator's death of the value of $250,976.95) shall revert and become the property and estate of testator's brother, John D. Billings (should he be alive at that time) and testator's nephews and nieces who shall be

living at the time of the death of said grandson, said brother, nieces, and nephews to share and share alike, it is therefore further ordered that the tax on said estate of $250,976.95 be, and the same hereby is, postponed until the said estate shall have become vested.

129 The real estate succeeded to in this estate is as follows:

Lots 21, 22, 23, and 24, in block 1, in Union Park addition to Chicago.

Lots 1, 2, 3, and 4, in William L. Lee's subdivision of that part of lot 3, in the circuit court partition of the S. W. ¼ of sec. 8, 39, 14, east and adjoining bl'k 10, in the Union Park Second addition to Chicago, except the west 196.54 feet thereof.

That part of lot 3, in the circuit court partition of the S. W. ¼ of sec. 8, 39, 14, described as follows: Beginning at the northeast corner of lot 1, in block 10, Union Park Second addition to Chicago, and running thence south, along the east line of said lot 1, 108 feet to the center of a proposed alley 16 feet wide; thence east on a line parallel with the south line of Fulton street 100 feet; thence north on a line parallel with the west line of Sheldon street 108 feet to the south line of Fulton street; thence west along the south line of Fulton street 100 feet — place of beginning.

Also lot 1, in block 10, in Union Park Second addition to Chicago.

Part of the 52.95 acres set off to Henry Hubbard in the partition proceeding among the owners of the S. W. ¼ of section 8, 39, 14, and being part of lot 2 of assessor's division of part of lot 3 south of Lake street in the circuit court partition of the S. W. ¼ of sec. 8, 39, 14, described as follows, to wit: Commencing at the northeast corner of said lot 2, running thence south on the east line of said lot 182½

130 feet to an alley; thence west on the north line of said alley 47.75 feet; thence north and parallel with the east line of said lot 183½ feet, more or less, to the south line of Lake street; thence east on the south line of Lake street to the place of beginning.

That part of the 52.95-acre tract set off to Henry Hubbard in partition among the owners of the S. W. ¼ of sec. 8, 39, 14, bounded as follows: Beginning on the south line of said tract at the southeast corner of the acre lot conveyed by William B. Ogden to W. F. Myrick, Jan. 29, 1853, thence east along said south line 96 feet; thence north 6.57 chains; thence west 96 feet to W. F. Myrick's northeast corner; thence south 6.56 chains to the place of beginning.

Commencing on the north line of Lake street 14.12½ chains (932.14 feet) east of the west line of the S. W. ¼ of sec. 8, 39, 14, thence east along said north line 1.52½ chains (100.54 feet); thence north 245 feet to the center line of a proposed alley (16 feet wide), which center line is to be 108 feet south of the south line of Fulton street; thence west along said center line parallel to Fulton street 1.52½ chains (100.54 feet); thence south 245 feet to the place of beginning.

Lots 7 and 8, bl'k 1, Union Park addition to Chicago.

Lots 13 and 14, in bl'k 10, Union Park Second addition to Chicago.

Lot 2, in bl'k 54, in Carpenter's addition to Chicago, and the east 20 feet of lot 3 and the west 20 feet of lot 3, in bl'k 54, said Carpenter's addition to Chicago.

Lots 4, 5, and 6, in the subdivision of lots 1 to 7 and 18, in bl'k 3, Union Park addition to Chicago.

131 Lots 1 and 2 and the east 25 feet of lots 3, in bl'k 4, in Union Park addition to Chicago.

Lot 12 and the east 20 feet of lot 13, John H. Kedzie's subdivision of bl'k 58, in the Canal Trustees' subdivision of sec. 7, 39, 14.

Lot 6, in bl'k 2, in Duncan's addition to the city of Chicago.

Lot 2, bl'k 5, D. S. Lee's addition to Chicago.

Lot 12, in Fairlawn—family cemetery lot.

Lot 3, being the south 19 acres of the west half of the N. W. ¼ of sec. 18, 40, 14 (except streets).

The S. ½ of bl'k 25, of Kinzie's addition to the city of Chicago, and lot 1, in bl'k 16, in Wolcott's addition to the city of Chicago.

The N. ½ of E. ½ and the S. ½ of W. ½ of bl'k 73, in Canal Trustees' subdivision of W. ½ of sec. 27, 39, 14.

Lot 1 (except the S. 28 feet thereof) and the E. 19 feet of lot 2 (except the S. 28 feet thereof), in Lesenbarth's resub'n of lot 1 (except the E. 7 feet thereof); the S. 169.6 feet of lot 2, the E. 69 feet of the N. 136.6 feet of lot 2, and the E. 16 feet of the S. 169.6 feet of lot 3, in Lesenbarth's sub'n of lot 36 of the School Trustees' sub'n of sec. 16, 38, 14.

Certificate of sale of the following-described real estate:

Lots 19, 25, 26, 27, 28, 29, and 37, bl'k 2, Ingham's sub'n of part of S. W. ¼ S. W. ¼, sec. 25, 40, 13.

132 N. 30 acres of S. 60 acres of E. ½ of S. E. ¼ of sec. 17, 40, 13; that part of S. E. ¼ of sec. 33, tp. 40, R. 13 E., 3 P. M., described as follows: Commencing 445 feet east of the N. W. corner of S. E. ¼ of said section, running thence south 245 feet; thence east 696.4 feet to the center of Grand avenue; thence north 61 degrees west along the center line of said Grand avenue 508 feet to the north line of said S. E. ¼ of said sec. 33; thence west on the said north line of said quarter section 251 feet to the place of beginning, containing 2.66 acres, more or less.

Lots 28 and 29, in McNeill's resub'n of lots 1 to 19 and 28 to 30, both inclusive, in block 5, in McNeill's sub'n of bl'ks 6, 7, & 8, in Wright's addition to Chicago; all of A. J. Stone's addition to Maywood, in sections 3 and 10, 39, 12.

The S. W. ¼ of S. W. ¼ of sec. 16, 40, 13, lot B, in the partition of lots 9, 10, and 11, in bl'k 1, in Union Park addition to Chicago.

The E. 20 1/3 feet of lot 12, all of lot 13, and the W. 9 1/3 feet of lot 14, in McNeill's resub'n of lots 1 to 19 and 28 to 30, both inclusive, in bl'k 5, in McNeill's sub'n of bl'k- 6, 7, and 8, in Wright's addition to Chicago; the W. 40 feet of lot 3, the N. 35 feet of W. 40 feet of lot 6, and the E. 20 feet of lot 4 and the N. 35 feet of the E. 20 feet of lot 5, in bl'k 5, of Wright's addition to Chicago.

Sublot 11, in the sub'n of lots 1 and 2, bl'k 8, of Rockwell's addition to Chicago.

The E. 40 feet of lot 22, bl'k 5, in McNeill's sub'n of blocks 6, 7, and 8, in Wright's addition to Chicago.

Out lot or bl'k 7, except that part taken for the widening

of Reuben street, now Ashland avenue, in the Canal Trustees'
133 sub'n of the W. ½ and the W. ½ and the W. ½ of N. E. ¼ of sec. 17, 39, 14.

Lot 16, bl'k 2, Union Park addition to Chicago, in S. W. ¼ of sec. 8, 39, 14.

It is further ordered that the appraisement returned by the appraiser in his said report, together with the cash value of the several estates, annuities, life estates, and terms of years and other property growing out of said estate of Albert M. Billings, deceased, and the tax thereon as assessed and fixed herein, be entered in the public inheritance tax record of this county.

ORRIN N. CARTER,
County Judge.

134 Be it further remembered that afterwards and on, to wit, the 24th day of August, 1899, there was filed in the office of the clerk of the county court of Cook county a certain certificate of mailing notices; which said certificate, with a true copy — the notices thereto attached, *are* in the words and figures as follows, to wit:

135 *Inheritance-tax Notice.*

STATE OF ILLINOIS, }
County of Cook, } *ss:*

In County Court.

In the Matter of the Estate of ALBERT M. BILLINGS, Deceased.
No. 283.

You are hereby notified that I have, by order made the 24 day of August, 1899, assessed and fixed the cash value of such interest, estate, legacy, or property as you and each of you are entitled to receive from or out of the estate left by said decedent and the amount of tax to which the same is liable under an act to tax gifts, legacies, and inheritances in certain cases, and to provide for the collection of the same, approved June 15, 1895, in force July 1, 1895, as follows, viz:

Beneficiary.	Cash value.	Tax.
Mrs. Augusta S. Billings	$2,363,151.75	$23,431.52
Henry A. Billings	13,005.24	.....
Harriet M. Farnsworth	12,168.00	486.72
C. K. G. Billings	2,502,118.75	24,821.18
Albert M. Billings Ruddock.	1,424,374.77	14,043.74
Copy.		
	$6,314,818.51	$62,763.16
Not yet vested	1,097,561.65	Postponed.
	$7,412,380.16	

You will please take notice that interest is also charged on this tax from date of death of decedent.

ORRIN N. CARTER,
County Judge.

136 *Inheritance Tax.*

STATE OF ILLINOIS, }
County of Cook, } ss:

In the Matter of the Estate — ALBERT M. BILLINGS. No. 283.

Certificate of Mailing Notice of Tax Fixed.

I, Orrin N. Carter, judge of the county of Cook, in the State of Illinois, do hereby certify that on the 24 day of August, A. D. 1899, I sent by mail a notice, a copy of which is hereto attached, to the following persons, being all the parties known to be interested in all estates, annuities and life estates, or terms of years growing out of said estate, and addressed as follows:

One copy to Samuel B. Raymond, county treasurer.

One copy to Mrs. Augusta S. Billings, executrix, 504 W. Lake St., Chicago.

One copy to C. K. G. Billings, executor, 470 Washington Blvd., Chicago.

One copy to Miss Harriet M. Farnsworth, 468 Washington Blvd., Chicago.

One copy to Albert M. Billings Ruddock, 468 Washington Blvd., Chicago.

One copy to Charles H. Ruddock, executor, 468 Washington Blvd., Chicago.

One copy to —— ——.
One copy to —— ——.
One copy to —— ——.
One copy to —— ——.
One copy to —— ——.
One copy to —— ——.
One copy to —— ——.
One copy to —— ——.
One copy to —— ——.
One copy to —— ——.
One copy to —— ——.
One copy to —— ——.
One copy to —— ——.
One copy to —— ——.

137 ORRIN N. CARTER,
County Judge.

(Endorsed on back:) No. 283. County court of Cook county. Inheritance tax. In the matter of the estate of Albert M. Billings, deceased. Certificate of mailing notice. Filed Aug. 24, '99. Philip Knopf, clerk. Orrin N. Carter, county judge.

138 Be it further remembered that afterwards and on, to wit, the 16th day of October, 1899, there was filed in the office of the clerk of the county court of Cook county in said cause certain

objections, protest, and prayer for appeal to the county court of Cook county, by Cornelius K. G. Billings and Albert M. Billings Ruddock, to the assessment made and fixed by the county judge on the 24th day of August, 1899, and the order of the county judge made and entered thereon; which said objections, protest, and prayer for appeal to the county court of Cook county and order of the county judge allowing said appeal are in the words and figures as follows, to wit:

139 STATE OF ILLINOIS, } ss:
County of Cook, }

In the County Court Thereof, to the August Term, A. D. 1899.

In the Matter of the Estate of ALBERT M. BILLINGS, Deceased. Inheritance Tax. Docket No. 283.

And now comes Cornelius K. G. Billings and Albert M. Billings Ruddock and object to and protest against the appraisement of the cash value of the life estate vested in them severally by the last will and testament of Albert M. Billings, deceased, and severally object to the assessment and tax made and fixed against them severally by the county judge of Cook county upon the report and appraisement made in the above-entitled matter and all proceedings had and taken thereunder, and pray an appeal from said appraisement and from the assessment and tax so as aforesaid made, assessed, and fixed against them severally to the county court of Cook county, and tender herewith security to pay all costs of this proceeding, together with whatever taxes, if any, shall be fixed by said court.

And said objectors severally show and represent unto the county court of Cook county that by the assessment and tax made, fixed, and entered in the above-entitled matter the said county judge did, on, to wit, the 24th day of August, A. D. 1899, by an order entered in said proceeding, fix and assess the tax to be paid by the said Cornelius K. G. Billings upon the life estate of said Cornelius K. G. Billings of, in, and to two-thirds of the residue and remainder of the property and estate of the said Albert M. Billings devised to him, said Cornelius K. G. Billings, by the said last will and testament of said Albert M. Billings at the sum of twenty-four thousand eight hundred and twenty-one dollars and eighteen cents
140 ($24,821.18), and did fix and assess the tax to be paid by the said Albert M. Billings Ruddock upon the life interest of the said Albert M. Billings Ruddock of, in, and to one-third of the residue and remainder of the property and estate of the said Albert M. Billings devised to him, said Albert M. Billings Ruddock, by the last will and testament of said Albert M. Billings at the sum of fourteen thousand and forty-three dollars and seventy-four cents ($14,043.74); that included in said assessment and tax against the said Cornelius K. G. Billings is the amount of the tax upon a specific devise of realty to Cornelius K. G. Billings of the value of thirty thousand dollars, the tax upon which, after allowing the de-

ductions prescribed by the statute and mentioned and allowed in said order, amounting to the sum of $100.00, the said Cornelius K. G. Billings does not object to the imposition thereof, but the objections hereinafter specified go to the assessment and tax fixed by said county judge upon the life estate of said Cornelius K. G. Billings and upon the life estate of the said Albert M. Billings Ruddock severally devised by the last will and testament of the said Albert M. Billings, deceased, of, in, and to the residue and remainder of the property and estate of the said Albert M. Billings.

And as grounds upon which are based said objections to the imposition of the said assessment and tax made, assessed, and fixed by the county judge, these objectors show unto the court and state the fact to be:

(1.) That it appears from the report of the appraiser appointed in said proceeding, Howard E. Leach, and the exhibits attached to said report, and by order of the county judge, said report and exhibits were filed with the clerk of the county court of Cook county, Illinois; that the said Albert M. Billings departed this life February 7, 1897, leaving a last will and testament, which was duly proved and admitted to probate by the probate court of Cook county,
141 Illinois, on the fifteenth day of February, A. D. 1897, and recorded in Book 25, page 142, in and by which last will and testament, after making certain bequests of certain real property in said will described, the said Albert M. Billings devised to the said Cornelius K. G. Billings and to the said Albert M. Billings Ruddock all the property and estate, not otherwise disposed of by his said executors in said last will and testament named, in the following manner, to wit: Two-thirds thereof to his son, Cornelius K. G. Billings, and one-third thereof to his grandson, Albert M. Billings Ruddock (objectors herein), to be held and owned by them severally during the terms of their several natural lives; but should testator's son, C. K. G. Billings, die not leaving a living child or children of his own issue, the property in said will bequeathed to him, said Cornelius K. G. Billings, should revert and be held and owned by the said grandson, Albert M. Billings Ruddock, during the lifetime of the said Albert M. Billings Ruddock; and should said grandson, Albert M. Billings Ruddock, die not leaving child or children of his own issue, then all the property and estate in and by said last will and testament bequeathed to him, the said Albert M. Billings Ruddock, should revert to and become the property and estate of one John D. Billings, the brother of the said Albert M. Billings, should the said John D. Billings be alive at that time, and to the living nephews and nieces who should be living at the time of the death of the said grandson, Albert M. Billings Ruddock, as aforesaid, said brother, nieces, and nephews to share and share alike in said estate.

(2.) That by said last will and testament of said Albert M. Billings an estate for life was devised to the said Cornelius K. G. Billings of, in, and to two-thirds of all the property and estate by said last will and testament bequeathed, not otherwise disposed of by the

executors of said Albert M. Billings named in said last will
142 and *named in said last will and* testament, to be held and enjoyed by the said Cornelius K. G. Billings for and during the term of his natural life, with remainder as to said two-thirds to the living child or children of the said Cornelius K. G. Billings him surviving, and by the said last will and testament of said Albert M. Billings an estate for life was devised to the said Albert M. Billings Ruddock of, in, and to one-third of all the property and estate by said last will and testament bequeathed, not otherwise disposed of by the said executors of said Albert M. Billings, to be held and enjoyed by the said Albert M. Billings Ruddock for and during the term of his natural life, with remainder as to said one-third to the living child or children of the said Albert M. Billings Ruddock him surviving.

(3.) That by the act of the General Assembly of the State of Illinois approved June 15th, 1895, entitled "An act to tax gifts, legacies, and inheritances in certain cases, and to provide for the collection of the same," under the pretended authority of which act the pretended assessment and tax made, fixed, and entered by the county judge aforesaid against the said Cornelius K. G. Billings and the said Albert M. Billings Ruddock severally in the above-entitled cause was had, made, fixed, and entered, it is provided that life estates, where the remainder is to lineal descendants, shall be subject to the tax in and by said act described; but that life estates, where the remainder is to collaterals or strangers to the blood or to the body politic or corporate, shall not be subject to any tax. Wherefore the said Cornelius K. G. Billings and the said Albert M. Billings Ruddock, as to the estates to them in and by said last will and testament severally devised for and during the term of the natural lives of the said Cornelius K. G. Billings and the said Albert M. Billings Ruddock, object to the assessment fixed and
made against them severally by the said county judge
143 of Cook county, and show unto the court that said assessment so made by the county judge aforesaid against them severally as such life tenants, is null and void and of no effect, because said procedure and all steps had or taken thereunder or connected therewith, including the appointment of the appraiser, Howard E. Leach, the making of said appraisement and report by the said Howard E. Leach as such pretended appraiser, and the assessment made and fixed by the county judge against the said Cornelius K. G. Billings and the said Albert M. Billings Ruddock severally were beyond the power of the said appraiser and of the said county judge; that such proceedings and all steps taken thereunder are unauthorized and not warranted by any valid statute of the State of Illinois; that the alleged appointment of said appraiser, Howard E. Leach, was invalid and without sanction of any valid law of the State of Illinois; that the county judge had no power or jurisdiction to appoint the said Howard E. Leach as appraiser *in* the estate of the said Albert M. Billings, deceased; that the assessment made, fixed, and entered by the county judge in and by said order of August 24, 1899, against the said Cornelius K. G. Billings and the said Albert M.

Billings Ruddock severally upon the appraisement and report so as aforesaid made by the said Howard E. Leach was invalid, illegal and void, unconstitutional, and of no valid force or effect, and that the said examination, investigation, procedure, appraisement, and report of the said Howard E. Leach were had and conducted without any warrant of law, and that the pretended assessment made, fixed, and entered by the county judge in and by said order fixing the tax on August 24th, 1899, was without warrant of any valid law of the State of Illinois or otherwise.

(4.) On the further ground that the act of the legislature of the State of Illinois under which said pretended procedure was had and taken (and being an act to tax gifts, legacies, and inheritances in certain cases, and to provide for the collection of the same,
144 approved June 15th, 1895, in force July 1st, 1895) is null and void and of no effect when attempted to be enforced and applied to the said Cornelius K. G. Billings and the said Albert M. Billings Ruddock in respect to the life estates by said last will and testament to them severally bequeathed and devised.

(5.) On the further ground that the said act is null and void because it is in conflict with and in violation of the provisions of article 9 of the constitution of the State of Illinois when attempted to be enforced against the said Cornelius K. G. Billings and the said Albert M. Billings Ruddock in respect to the life estates by said last will and testament to them severally bequeathed and devised.

(6.) On the further ground that the said procedure and all steps had and taken therein under the said alleged act of the legislature of the State of Illinois entitled "An act to tax gifts, legacies, and inheritances in certain cases, and to provide for the collection of the same," is null and void because said act is in conflict with and in violation of the provisions of the fourteenth amendment to the Constitution of the United States of America when attempted to be enforced and applied against the said Cornelius K. G. Billings and the said Albert M. Billings Ruddock in respect of the said life estates by said last will and testament to them severally bequeathed and devised.

(7.) That the making of said assessment and the fixing of said tax by the county judge aforesaid, pursuant to the procedure had and taken under the pretended authority of the said act of the General Assembly of the State of Illinois aforesaid, is taking of private property without due process of law and is a denial of the equal protection of the law of the land to the said Cornelius K. G. Billings and to the said Albert M. Billings Ruddock and, as such, is in conflict with and in violation of the constitution of the State of
145 Illinois and the Constitution of the United States of America and of all the amendments thereto.

(8.) And the said Cornelius K. G. Billings and Albert M. Billings Ruddock severally further object to the assessment and tax made, levied, and fixed against them severally in said proceeding by the said county judge and the amounts thereof severally as improper, informal, and insufficient in other respects manifest upon the face of said order fixing the said tax.

Wherefore the said Cornelius K. G. Billings and the said Albert M. Billings Ruddock severally pray an appeal to the county court of Cook county, and that said assessment and tax so, as aforesaid, made, levied, and fixed by the said county judge against them, the said Cornelius K. G. Billings and the said Albert M. Billings Ruddock severally, as aforesaid, may be set aside, annulled, and held for naught.

And said objectors, as in duty bond, will ever pray, etc.

CORNELIUS K. G. BILLINGS AND
ALBERT M. BILLINGS RUDDOCK,
By WINSTON & MEAGHER, *Attorneys.*]

146 STATE OF ILLINOIS, }
County of Cook, } *ss:*

In the County Court Thereof, to the August Term, A. D. 1899.

In the Matter of the Estate of ALBERT M. BILLINGS, Deceased. Inheritance Tax. Docket No. 283.

Now, on this day, come Cornelius K. G. Billings and Albert M. Billings Ruddock severally and file their objections to the assessment against them upon the life estates to them, the said Cornelius K. G. Billings and the said Albert M. Billings Ruddock, severally devised by the last will and testament of Albert M. Billings, deceased, heretofore made and fixed by the county judge in the above-entitled matter, and pray an appeal to the county court of Cook county.

And the said Cornelius K. G. Billings and Albert M. Billings Ruddock having given security according to law—

It is ordered that said objections and prayer for an appeal be filed, and that an appeal to the county court of Cook county be allowed to the said Cornelius K. G. Billings and the said Albert M. Billings Ruddock from the assessment and tax heretofore made and fixed by the county judge in and by the order heretofore and on the 24th day of August, 1899, made and entered in the above-entitled cause against them, the said Cornelius K. G. Billings and the said Albert M. Billings Ruddock, severally upon the life estates to them, the said Cornelius K. G. Billings and Albert M. Billings Ruddock, severally devised in and by the last will and testament of Albert M. Billings, deceased.

O K.

ORRIN N. CARTER,
County Judge.

147 (Endorsed on back as follows:) 18378. County court of Cook county. Inheritance-tax docket. *In re* estate of Albert M. Billings, deceased. Objections by Cornelius K. G. Billings and Albert M. Billings Ruddock to assessment made and fixed by county court August 24th, 1899, and order to file same. Filed Oct. 16, 1899. Philip Knopf, clerk. Winston & Meagher, attorneys-at-law, Monadnock building, Chicago.

148 Be it further remembered that afterwards and on, to wit, the 16th day of October, 1899, there was filed in the office of the clerk of the county court of Cook county a certain bond on appeal; which said bond is in the words and figures as follows, to wit:

149 Know all men by these presents that we, Cornelius K. G. Billings and Albert M. Billings Ruddock, of the county of Cook and State of Illinois, are jointly and severally held and firmly bound unto Orrin N. Carter, judge of the county court of Cook county, State of Illinois, in the penal sum of fifty thousand dollars ($50,000), lawful money of the United States; for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly, severally, and firmly, as hereinafter set out and described, by these presents.

As witness our hands and seals this 30th day of August, A. D. 1899.

The condition of the above obligation is such that whereas Orrin N. Carter, as county judge of Cook county, Illinois, did heretofore appoint Howard E. Leach to appraise the value of the property of the estate of Albert M. Billings, deceased, subject to taxation under and pursuant to the statute of the State of Illinois relating to the taxation of gifts, legacies, and inheritances, and the said Howard E. Leach, as appraiser, did afterwards give notice of the time and place of said appraisement to all persons known to have or claim any interest in said property, and to such persons as were by order of the county judge aforesaid directed, and thereafter the said Howard E. Leach, as such appraiser, appraised the said property of the said estate at its fair market value and made report of said appraisement to said Orrin N. Carter, county judge of Cook county aforesaid, which report, together with the depositions of witnesses and exhibits in said estate taken, were returned and, by direction of said county judge, filed in the office of the clerk of the county court of Cook county; and—

Whereas afterwards and on the 24th day of August, A. D. 1899, the said Orrin N. Carter, as county judge of Cook county aforesaid, approved the said report of appraisement and did on the said 24th day of August, A. D. 1899, fix the cash value of the several
150 estates, annuities, and life estates or terms of years growing out of said estate of the said Albert M. Billings, deceased, subject to taxation under said statutes and the tax to which the same were severally liable, and then and there assessed and fixed the tax payable and to be paid by the said Cornelius K. G. Billings at the sum of twenty-four thousand eight hundred twenty-one dollars and eighteen cents ($24,821.18), and the tax payable and to be paid by the said Albert M. Billings Ruddock at the sum of fourteen thousand forty-three dollars and seventy-four cents ($14,043.74); and

Whereas subsequently notice by mail was given to all parties known to be interested in said assessment; and

Whereas the said Cornelius K. G. Billings and the said Albert M. Billings Ruddock are dissatisfied with the said appraisement and assessments aforesaid and have prayed an appeal from said

appraisement and assessment so made, as aforesaid, to the county court of Cook county:

Now, therefore, if the said Cornelius K. G. Billings and the said Albert M. Billings Ruddock shall well and truly, faithfully pay and discharge all costs consequent upon the praying of said appeal, together with whatever taxes shall be fixed and determined by said court against them severally in said matter, then this obligation to be void; otherwise to remain in full force and virtue.

(Signed) CORNELIUS K. G. BILLINGS. [SEAL.]
" ALBERT M. BILLINGS RUDDOCK, [SEAL.]
By C. K. G. BILLINGS.

Approved:
ORRIN N. CARTER.

151 (Endorsed on back as follows:) 18378. County court, Cook county. Inheritance tax. Docket No. 283. Estate of Albert M. Billings, deceased. Bond on appeal — Cornelius K. G. Billings and Albert M. Billings Ruddock from order of county judge fixing tax, August 24, 1899. Filed Oct. 16, 1899. Philip Knopf, clerk.

152 Be it further remembered that afterwards and on, to wit, the 16th day of October, 1899, there was filed in the office of the county court of Cook county a certain stipulation in the matter of the estate of Albert M. Billings, deceased; which said stipulation is in the words and figures as follows, to wit:

153 STATE OF ILLINOIS, } ss:
County of Cook, }

In the County Court Thereof, to the August Term, A. D. 1899.

In the Matter of the Estate of ALBERT M. BILLINGS, Deceased. Inheritance Tax. Docket No. 283.

Appeal of Cornelius K. G. Billings and Albert M. Billings Ruddock to the county court of Cook county, Illinois.

It is hereby stipulated and agreed by and between the parties to the above-entitled matter that on the hearing and trial in the county court of Cook county of the objections filed by Cornelius K. G. Billings and Albert M. Billings Ruddock to the assessment and tax made, fixed, levied, and imposed in said proceeding by the county judge upon the life estates of the said Cornelius G. K. Billings and the said Albert M. Billings Ruddock, severally to them devised by the last will and testament of Albert M. Billings, deceased, that the report of Howard E. Leach, appraiser, appointed by the county judge of Cook county in the above-entitled matter, filed in the office of the clerk of the county court of Cook county on August 24th, 1899, together with all the depositions of witnesses produced and examined by the said appraiser, Howard E. Leach, the exhibits attached

to said depositions, and report of said appraiser, and all or such parts thereof as either party desires to use, offer, or present on said trial and hearing, may be offered in evidence upon said trial and hearing of said objections and used by either party with the like force and effect as if offered separately and independently upon said hearing, and that the matters and things contained in said depositions, exhibits, and report of the said appraiser, or such parts thereof
154 as either party desires to offer or use, may be offered and used from said report, depositions, and exhibits, and shall be treated by the court on said trial and hearing of said objections with the like force and effect as if offered separately and independently upon the trial and hearing of said objections so filed by said Cornelius K. G. Billings and Albert M. Billings Ruddock.

It is further stipulated and agreed said Albert M. Billings died on February 7th, 1897, leaving a last will and testament, which was duly filed, proved, and admitted to probate in the probate court of Cook county on the 15th day of February, 1897, a true copy whereof is set out as an exhibit to the depositions and report of the said appraiser aforesaid, leaving him surviving his widow, Augusta S. Billings, born April 19, 1822; Cornelius K. G. Billings, his son, born September 17th, 1861; Albert M. Billings Ruddock, a grandson, born January 13th, 1886, son of Sarah A. Billings, daughter (deceased prior to the death of the said Albert M. Billings), and Henry A. Billings, a son, born in the year 1837, his only heirs-at-law; that the said Cornelius K. G. Billings has two children born to him, the eldest, Blanche Pauline Billings, a daughter, born June 25th, 1886, and Albert M. Billings, Jr., a son, born November 15th, 1894; that the said widow, the said Cornelius K. G. Billings, Albert M. Billings Ruddock, Henry A. Billings, and the children born to said Cornelius K. G. Billings and his wife, Blanche Elizabeth Billings, are all now living; that in and by said last will and testament said Albert M. Billings nominated and appointed his wife, Augusta S. Billings; his son, Cornelius K. G. Billings, and his son-in-law, Charles H. Ruddock, to be sole executors of said last will and testament; that said executors entered upon the performance of their duties as such executors, and have performed all and singular the duties imposed upon them by said last will and testament and by law, and as such executors have been discharged from further actings and doings, save and except as to the payment of inheritance taxes under an act to tax gifts, legacies, and inheritances,
155 approved June 15th, 1895, if the life estates of the said Cornelius K. G. Billings and the said Albert M. Billings Ruddock, severally to them devised by said last will and testament of Albert M. Billings, deceased, and the dower of the widow, Augusta S. Billings, shall be held to be subject to the payment of inheritance taxes under said act aforesaid of the General Assembly of the State of Illinois, approved June 15th, 1895.

It is further stipulated and agreed that the necessity of formal proofs of the documents, being the exhibits attached to said depositions and report filed in the office of the clerk of the county court by Howard E. Leach, appraiser appointed in said estate, is hereby waived, and said exhibits and depositions and report shall be treated

by all courts as duly and properly authenticated, and that said depositions and exhibits shall be treated and used on the trial and hearing of said objections and said appeal as if formally proved, and said exhibits produced and witnesses called to testify to the matters and things contained, stated, and testified to in said depositions as shown therein and thereby.

It is further stipulated and agreed that the trial and hearing of said objections shall be had by a short day; that if either party to said appeal is dissatisfied with the finding and judgment thereon of the county court of Cook county, an appeal may and shall be forthwith taken and allowed to the supreme court of Illinois for the purpose of having said appeal heard and decided by the said supreme court at the first term of said supreme court after the entry of the final judgment in said cause by the county court of Cook county; that the clerk of the county court of Cook county shall, on an appeal being allowed, forthwith prepare a record of all the proceedings had and taken in said procedure from the beginning, which shall include all entries made in the public inheritance tax record of Cook county, Illinois; the report of Howard E. Leach, the appraiser appointed by the county judge in said proceeding, including the depositions
156 of witnesses and all exhibits attached to said report filed in the office of the clerk of the county court; the order assessing and fixing said tax by the county judge, Orrin N. Carter, on the 24th day of August, 1899; the notice of assessment of tax to parties interested; the objections filed by the said Cornelius K. G. Billings and Albert M. Billings Ruddock to the assessment and tax so made and fixed by said county judge and the appeal by said Cornelius K. G. Billings and Albert M. Billings Ruddock to the county court of Cook county; the final judgment of the county court of Cook county upon the trial of said objections and appeal, and all and singular all other entries, orders, and stipulations made and filed in said proceeding and in said county court of Cook county, Illinois.

That a formal bill of exceptions shall be waived, but any appeal taken in said cause to the supreme court of Illinois shall be heard and decided in said supreme court upon the matters and things in this stipulation contained, and the law applicable thereto, with the like force and effect as if preserved by formal bill of exceptions, it being expressly stipulated and agreed that the parties hereto severally save all and every objection and exception useful, necessary, or proper to present to the supreme court of Illinois and all other courts the questions involved in this proceeding, and being the right, power, and authority to make an assessment and fix a tax upon the life estates severally devised to the said Cornelius K. G. Billings and the said Albert M. Billings Ruddock by the last will and testament of Albert M. Billings, deceased, under an act of the General Assembly of the State of Illinois to "tax gifts, legacies, and inheritances in certain cases, and to provide for the collection of the same," approved June 15th, 1895, in force July 1st, 189[illegible]

(Signed) ROBERT S. ILES,
Attorney for the People of the State of Illinois.
WINSTON & MEAGHER,
Attorneys for C. K. G. Billings, Albert M. Billings Ruddock.

157 (Endorsed as follows:) 18378. County court, Cook county. Inheritance tax. Docket No. 283. Estate of Albert M. Billings, deceased. Stipulation. Filed Oct. 16, 1899. Philip Knopf, clerk. Winston & Meagher, attorneys-at-law, Monadnock building, Chicago.

158 Be it further remembered that afterwards and on, to wit, the 19th day of October, 1899, there was made and entered in the matter of the estate of Albert M. Billings, deceased, a certain order by the said county court of Cook county, Illinois; which said order is in the words and figures as follows, to wit:

159 STATE OF ILLINOIS, } ss.:
County of Cook, }

In the County Court Thereof, to the August Term, A. D. 1899.

In the Matter of the Estate of ALBERT M. BILLINGS, Deceased. Inheritance Tax. Docket No. 283.

Appeal of Cornelius K. G. Billings and Albert M. Billings Ruddock to the county court of Cook county.

And now, on this day (the same being one of the days of the August, A. D. 1899, term of this court), coming on to be heard the objections filed by Cornelius K. G. Billings and Albert M. Billings Ruddock to the assessment and tax heretofore, and on the 24th day of August, 1899, made and fixed by the county judge against them severally in assessing the tax to be paid upon the life estates of the said Cornelius K. G. Billings and the said Albert M. Billings Ruddock, to them severally devised by the last will and testament of Albert M. Billings, deceased, and the court having heard the evidence adduced on the trial and hearing of said objections and of said cause, and having heard the arguments of counsel and taken said cause under advisement, and being now fully advised in the premises, the court finds:

1. That Albert M. Billings died in the city of Chicago, State of Illinois, on the 7th day of February, A. D. 1897, possessed of real and personal property; that the said Albert M. Billings for many years prior to his decease had been a citizen and resident of the city of Chicago, county of Cook and State of Illinois; that the said Albert M. Billings died testate leaving a last will and testament executed on the 6th day of October, 1890, by the said Albert M. Billings, which last will and testament was duly proved and
160 admitted to probate by the probate court of Cook county on the 15th day of February, A. D. 1897, and recorded in Book 25, at page 142; that the said Albert M. Billings left him surviving his widow, Augusta S. Billings, born April 19th, 1822; Cornelius K. G. Billings, his son, born of the marriage of said Albert M. Billings and Augusta S. Billings, his wife, September 17th, 1861; Albert M. Billings Ruddock, a grandson, born January 13th, 1886,

son of Sarah A. Billings, daughter of the said Albert M. Billings and Augusta S. Billings, and which daughter, Sarah A. Billings, deceased prior to the death of the said Albert M. Billings, and Henry A. Billings, a son, born in the year 1837, his only heirs-at-law; that the said Cornelius K. G. Billings intermarried with Blanche Elizabeth McLeish and had two children born to him and his wife, Blanche Elizabeth Billings, to wit, Blanche Pauline Billings, a daughter, born June 25th, 1886, and Albert M. Billings, Jr., a son, born November 15th, 1894; that the said widow, Augusta S. Billings, the said Cornelius K. G. Billings, the said Albert M. Billings Ruddock, the said Henry A. Billings, and the children born to the said Cornelius K. G. Billings and his wife, Blanche Elizabeth Billings, are now all living.

2. And the court further finds that by the said last will and testament of Albert M. Billings the said Albert M. Billings devised and bequeathed to his son, Cornelius K. G. Billings, and to his grandson, Albert M. Billings Ruddock, to be held and owned by them at the death of his said wife, Augusta S. Billing, all the property and estate not otherwise disposed of by his said executors in said last will and testament named, in the manner following—that is to say:

Two-thirds thereof to his son, Cornelius K. G. Billings, and one-third thereof to his grandson, Albert M. Billings Ruddock, to be held and owned by them during their lifetime; but should the said son, Cornelius K. G. Billings, die, not leaving a living child
161 or children of his own issue, the property in said last will and testament bequeathed to him, the said Cornelius K. G. Billings, should revert and be held and owned by his grandchild, Albert M. Billings Ruddock, during the lifetime of the said Albert M. Billings Ruddock, and should said grandson, Albert M. Billings Ruddock, die, not leaving a living child or children of his own issue, then all the property and estate in said last will and testament bequeathed to him, the said Albert M. Billings Ruddock, should revert and become the property and estate of the brother of said testator, John D. Billings, should he be alive at that time, and to the living nephews and nieces of testator who should be living at the time of the death of said grandson, as aforesaid, the said brother, nieces, and nephews to share and share alike in said estate.

That the said testator in and by said last will and testament appointed his wife, Augusta S. Billings; his son, Cornelius Kingsley Garrison Billings, and his son-in-law, Charles H. Ruddock, to be sole executors of said last will and testament; that said executors entered upon the performance of their duties as such executors and have performed all and singular the duties imposed upon them by said last will and testament and by law, and as such executors have been discharged from further actings and doings, save and except as to the payment of inheritance taxes, under an act to tax gifts, legacies, and inheritances, approved June 15th, 1895, if the life estates severally devised and bequeathed to the said Cornelius K. G. Billings and the said Albert M. Billings Ruddock by the last will and testament of the said Albert M. Billings, deceased, and the dower of the said widow, Augusta S. Billings, shall be held to be subject to the payment of said inheritance taxes under the act afore-

said of the General Assembly of the State of Illinois, approved June 15th, 1895.

3. And the court further finds that on the 7th day of July, 1898, Howard E. Leach, Esq., was by the county judge of Cook
162 county appointed appraiser under and pursuant to the statutes of the State of Illinois relating to the taxation of gifts, legacies, and inheritances in certain cases, approved June 15th, 1895, in force July 1st, 1895, to fix the fair market value of the property of the estate of said Albert M. Billings, deceased, subject to taxation under said act; that the said appraiser gave notice by mail to all persons known to have or claim an interest in the property of said decedent subject to assessment, and to such persons as the county judge by order directed, of the time and place at which said appraiser would appraise said property; that the said Cornelius K. G. Billings and Albert M. Billings Ruddock appeared before said appraiser in response to said notice and objected to said appraisement and all procedure had or about to be had or taken therein, on the ground that such proceedings *was* beyond the power of the said appraiser, and that such proceedings and all steps about to be had or taken thereunder were unauthorized and not warranted by any valid statute of the State of Illinois; that the appointment of the said appraiser was without due sanction of any valid law of the State of Illinois, and did not comply with the requirements of law, and that the county judge had no jurisdiction to appoint said Howard E. Leach as appraiser of the said estate of said Albert M. Billings, deceased, and that said proposed examination, investigation, and procedure were without warrant of law, and that the act of the legislature of the State of Illinois under which said procedure was pretendedly had and taken (and being an act to tax gifts, legacies, and inheritances in certain cases, and to provide for the collection of the same, approved June 15th, 1895, in force July 1st, 1895), was null and void because in conflict with and in violation of the provisions of article 9 of the constitution of the State of Illinois, and in conflict with and in violation of the provisions of the fourteenth amendment to the Constitution of the United States of America, and be-
163 cause said proceeding and all steps proposed to be had or taken therein, when attempted to be enforced against the said Cornelius K. G. Billings and the said Albert M. Billings Ruddock upon the life estates to them severally devised and bequeathed by the last will and testament of Albert M. Billings, deceased, was a taking of private property without due process of law, and a denial of equal protection of the laws to the said Cornelius K. G. Billings and the said Albert M. Billings Ruddock, and, as such, in conflict with and in violation of the constitution of the State of Illinois and the Constitution of the United States of America and of all amendments thereto.

4. And the court further finds that at the time and place in said notice stated, to wit, at room 707, Security building, 188 Madison street, in the city of Chicago, Illinois, at the hour of 2 p. m., on the 22nd day of July, 1898, and thereafter from time to time, pursuant

to adjournments regularly had, persons appearing at said appraisement in behalf of said estate, said Howard E. Leach proceeded to appraise such property of the estate of said deceased subject to taxation under said act, and to take evidence in writing, under oath, of the several witnesses produced concerning said property and the fair market value thereof at the time of the death of said decedent; and thereafter the said Howard E. Leach made a full report of all his actings and doings in that behalf to the Honorable Orrin N. Carter, county judge of Cook county; which said report, together with the depositions taken, which were attached to said report and made a part thereof, and including also the certain documentary evidence produced on said appraisement, likewise attached to said report and made a part thereof, were by order of the county judge of Cook county filed in the office of the clerk of the county court on, to wit, the 24th day of August, 1899.

164 5. And the court further finds that thereafter and on the 24th day of August, 1899, the Honorable Orrin N. Carter, as county judge of Cook county, upon the report of said Howard E. Leach, that day presented and read, ordered that the said report of appraisement by the said Howard E. Leach be approved, and that the said report, together with the depositions of witnesses and exhibits in said estate taken and returned therein, be forthwith filed in the office of the county clerk of Cook county.

6. And further ordered that upon said report the cash value of the several estates, annuities, and life estates or terms of years growing out of the said estate of Albert M. Billings, deceased, subject to taxation under said statutes and the tax to which the same are severally liable be assessed and fixed as follows:

Beneficiary, relationship, and description of property.	Appraised value.	Exemptions.	Cash value of estate.	Tax.
Augusta S. Billings (widow of testator):				
Widow's award..... $13,070.00				
Dower..... 69,266.70				
⅓ of personalty.....2,280,815.05				
	$2,363,151.75	$20,000	$2,343,151.75	$23,431.52
Henry A. Billings, son:				
Income for life of $1,200 per year.....	13,005.24	20,000	*	*
Harriet M. Farnsworth, stranger:				
Income for life of $1,200 per year.....	12,168.00	*	12,168.00	486.72
Cornelius K. G. Billings, son:				
Specific devise of realty..... 30,000.00				
Life interest in ⅔ of residue and remainder.....2,472,118.75				
	2,502,118.75	20,000	2,482,118.75	24,821.18
Albert M. Billings Ruddock, grandson:				
Specific devise of realty..... 16,000 00				
Life interest in ¼ of residue and remainder.....1,408,374.77				
	1,424,374.77	20,000	1,404,374.77	14,043.74
				$62,763.16

165 And it appearing from said report that by the terms of the last will and testament of said decedent an estate in remainder of the value of $846,584.70, is not yet vested, it being provided that in case testator's son, C. K. G. Billings, who is still living, died not leaving a living child or children of his own issue, the property bequeathed to him for life (the remainder therein being at the time of testator's death of the value of $846,584.70) shall revert to and be held and owned by testator's grandson, Albert M. Billings Ruddock, during his lifetime, it is therefore further ordered that the tax thereon be, and the same hereby is, postponed until said estate of $846,584.70 shall have become vested.

And it further appearing from said report that a further estate in remainder, of the value of $250,976.95, is not yet vested, it being provided by said last will and testament that in case testator's grandson, Albert M. Billings Ruddock, who is still living, die not leaving a child or children of his own issue, then the property bequeathed to him for life (the remainder therein being at the time of testator's death of the value of $250,976.95) shall revert and become the property and estate of testator's brother, John D. Billings (should he be alive at that time), and testator's living nephews and nieces who shall be living at the time of the death of said grandson, said brother, nieces, and nephews to share and share alike, it is therefore further ordered that the tax on said estate of $250,976.95 be, and the

same hereby is, postponed until the said estate shall have become vested.

7. And the court further finds that the county judge further ordered that the appraisement returned by the said Howard E. Leach, appraiser, as aforesaid, in his said report, together with the cash value of the several estates, annuities, life estates, and terms of years and other property growing out of the said estate of Albert M. Billings, deceased, and the tax thereon assessed and fixed as in said order, should be entered in the public inheritance tax record
166 of Cook county.

8. And the court further finds that thereupon notice of the order making said assessment and fixing said tax so, as aforesaid, made by the county judge on August 24th, 1899, was given to the persons interested.

9. And the court further finds that thereafter the said Cornelius K. G. Billings and the said Albert M. Billings Ruddock prayed an appeal from said order entered by the county judge on the 24th day of August, 1899, from the assessment and tax made and fixed against them severally, as aforesaid, upon the life estates to them severally devised and bequeathed by the last will and testament of Albert M. Billings, deceased, to the county court of Cook county, which appeal was by the county court of Cook county allowed.

It is therefore ordered that the said objections of the said Cornelius K. G. Billings and of the said Albert M. Billings Ruddock and each and all of them heretofore filed in said proceedings be overruled, set aside, and held for naught, and the action of the county judge in making said assessment and fixing the tax to be paid by the said Cornelius K. G. Billings and the said Albert M. Billings Ruddock, severally, as shown by the order of the county judge filed August 24th, 1899, be approved, ratified, and confirmed in all things.

It is further ordered that the cash value of the several estates, annuities, and life estates or terms of years growing out of the said estate of Albert M. Billings, deceased, subject to taxation under said statute, and the tax to which the same are severally liable, as assessed and fixed by the county judge in and by said order fixing said tax, made, filed, and entered in the public inheritance tax record of Cook county August 24th, 1899, be approved, ratified, and confirmed in all things.

And thereupon said Cornelius K. G. Billings and Albert M. Billings Ruddock except to the ruling of the county court in
167 this behalf and prays an appeal to the supreme court of Illinois, which appeal, by stipulation of the parties, is allowed by the court on the said Cornelius K. G. Billings and Albert M. Billings Ruddock entering into security to pay the costs of this proceeding, and all costs of the supreme court, and the tax which shall ultimately be decided to be due and payable upon the life estates of said Cornelius K. G. Billings and the said Albert M. Billings Ruddock severally, which security is now here offered in open court and approved.

And the People except to the ruling of the court herein, wherein

the court approves that portion of the appraiser's report which finds certain estates in remainder not vested and pos-pones the assessment of inheritance tax thereon.

It is further ordered, on stipulation of the parties, that the clerk of this court forthwith make and certify to the supreme court as the record of this proceeding the proceedings had and taken as shown by the public inheritance tax record of Cook county in the above-entitled matter, the report of Howard E. Leach, appraiser, appointed in said proceeding, and the depositions and exhibits thereto attached, filed in the office of the clerk of the county court August 24th, 1899; the order of the county judge making the assessment and fixing — in said proceeding dated August 24th, 1899; the notices of assessment of said tax to parties interested; the objections of Cornelius K. G. Billings and of Albert M. Billings Ruddock to the order of August 24th, 1899, fixing said tax and the making of said assessment by the county judge against them and the said Cornelius K. G. Billings and Albert M. Billings Ruddock, and the appeal of the said Cornelius K. G. Billings and Albert M. Billings Ruddock to the county court of Cook county, Illinois; the stipulations of the parties filed in said cause on said appeal and this final order approving and confirming the action of the county judge in fixing said tax and making said assessment, as shown in and by said order of August 24th, 1899, and that the clerk of this court certify to the

168 supreme court the record in said proceeding, as herein specified, as the full and complete record of all things had, done, or taken in and about the making of said assessment and the fixing of the tax to be paid by the said Cornelius K. G. Billings and the said Albert M. Billings Ruddock as herein made, found, and entered.

Enter. Oct. 19, '99.

(Signed) ORRIN N. CARTER,
County Judge.

Endorsed as follows: County court of Cook county. 18378. *In re* estate of Albert M. Billings, deceased. Inheritance tax. Docket No. 283. Appeal of Cornelius K. G. Billings and Albert M. Billings Ruddock. Order confirming tax assessed and fixed by county judge on August 24th, 1899, against the said Cornelius K. G. Billings and the said Albert M. Billings Ruddock, and overruling objections of said last-named parties. Entered October 19. Philip Knopf, clerk.

169 Be it further remembered that afterwards and on, to wit, the 19th day of October, 1899, there was filed and approved in said cause, being the matter of the estate of Albert M. Billings, deceased, a certain appeal bond; which said appeal bond and the order approving the same are in the words and figures as follows, to wit:

170 Know all men by these presents that we, Cornelius K. G. Billings and Albert M. Billings Ruddock, of the county of

Cook and State of Illinois, are jointly and severally held and firmly bound unto the People of the State of Illinois in the penal sum of fifty thousand dollars ($50,000), lawful money of the United States; for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly, severally, and firmly, as hereinafter set out and described, by these presents.

As witness our hands and seals this 19th day of October, A. D. 1899.

The condition of the above obligation is such that whereas Orrin N. Carter, as county judge of Cook county, Illinois, did heretofore appoint Howard E. Leach to appraise the value of the property of the estate of Albert M. Billings, deceased, subject to taxation under and pursuant to the statute of the State of Illinois relating to the taxation of gifts, legacies, and inheritances, and the said Howard E. Leach, as appraiser, did afterwards give notice of the time and place of said appraisement to all persons known to have or claim any interest in the said property, and to such persons as were by order of the county judge aforesaid directed, and thereafter the said Howard E. Leach, appraiser, appraised the said property of the said estate at its fair market value and made report of said appraisement to the said Orrin N. Carter, county judge of Cook county aforesaid; which report, together with the depositions of witnesses and the exhibits in said estate taken, were returned and by direction of said county judge filed in the office of the clerk of the county court of Cook county;

And whereas afterwards and on the 24th day of August, 1899, the said Orrin N. Carter, as county judge of Cook county aforesaid, approved the said report of appraisement, and did on the said 24th day of August, A. D. 1899, fix the cash value of the several
171 estates, annuities, and life estates or terms of years growing out of the said estate of the said Albert M. Billings, deceased, subject to taxation under said statute and the tax to which the same were severally liable, and then and there assessed and fixed the tax payable and to be paid by the said Cornelius K. G. Billings at the sum of twenty-four thousand eight hundred twenty-one dollars and eighteen cents ($24,821.18), and the tax payable and to be paid by the said Albert M. Billings Ruddock at the sum of fourteen thousand forty-three dollars and seventy-four cents ($14,043.74);

And whereas subsequently notice by mail was given to all parties known to be interested in said assessment;

And whereas the said Cornelius K. G. Billings and Albert M. Billings Ruddock subsequently filed objections to said assessment and tax so made and fixed against them by the said county judge and prayed for and were allowed an appeal to the county court of Cook county pursuant to the said statute;

And whereas subsequently the action of the said Orrin N. Carter, as county judge, in making said assessment and fixing said tax, as aforesaid, against the said Cornelius K. G. Billings and said Albert M. Billings Ruddock was in all things approved and confirmed by said county court of Cook county, Illinois, on said appeal;

And whereas the said Cornelius K. G. Billings and Albert M. Billings Ruddock have prayed an appeal from the action of the county court of Cook county, as aforesaid, to the supreme court of the State of Illinois, which appeal has been allowed on giving proper security to pay said tax and all costs of said appeal in case the action of the county court in that behalf shall be affirmed by the supreme court, being this instrument:

Now, therefore, if the said Cornelius K. G. Billings and Albert M. Billings Ruddock shall prosecute said appeal with effect and, moreover, shall well, truly, and faithfully pay and discharge all costs consequent upon the praying of said appeal to the supreme
172 court of Illinois that may be adjudged against them, and, moreover, will pay the tax fixed and assessed against them by the said county court of Cook county in case the action of said county court in that behalf shall be affirmed by the supreme court of Illinois, then this obligation to be void; otherwise to remain in full force and virtue.

(Signed) CORNELIUS K. G. BILLINGS. [SEAL.]
ALBERT M. BILLINGS RUDDOCK. [SEAL.]
By C. K. G. BILLINGS.

Approved:
ORRIN N. CARTER, *Co. Judge.*

O K.
ROBERT S. ILES,
Att'y for The People.

(Endorsed as follows:) 18378. County court, Cook county. *In re* estate — A. M. Billings, dec'd. Inheritance tax. Docket 283. Appeal. C. K. G. Billings, A. M. B. Ruddock. Bond on appeal to supreme court. Filed Oct. 19, 1899. Philip Knopf, clerk.

173 STATE OF ILLINOIS, } ss:
County of Cook, }

I, Philip Knopf, clerk of the county court of Cook county, Illinois, do hereby certify the above and foregoing to be a full, true, and perfect transcript of the record in the matter of the proceedings had before the county judge and before the county court of Cook county and State of Illinois in the matter of the taxation of gifts, legacies, and heritances in the estate of Albert M. Billings, deceased, lately pending before the said county judge and in the said county court of Cook county.

In witness whereof I have hereunto set my hand and affixed the seal of said court, at Chicago, this 1st day of November, A. D. 1899.

[SEAL.] PHILIP KNOPF,
Clerk of the County Court, Cook County, Illinois.

174 In the Supreme Court of Illinois, December Term, A. D. 1899.

CORNELIUS K. G. BILLINGS and ALBERT M. Billings Ruddock, Appellants, *vs.* PEOPLE OF THE STATE OF ILLINOIS, Appellee-.	Appeal from the County Court of Cook County.

And now come Cornelius K. G. Billings and Albert M. Billings Ruddock, legatees and devisees under the last will and testament of Albert M. Billings, deceased, by Winston & Meagher, their attorneys, and say that in the record and proceedings and in rendering the judgment aforesaid there is manifest error in this, to wit:

First. The county judge erred in making, assessing, and fixing the tax to be paid by appellants and each of them as life tenants under the last will and testament of Albert M. Billings, deceased.

Second. The county court erred in approving and confirming the assessment and taxes made and fixed by the county judge against appellants and each of them.

Third. Neither the county judge nor the county court had any power or authority under the laws of the State of Illinois to make the assessment and fix the tax shown in and by the record against appellant- or either of them.

Fourth. The law does not authorize the county judge or the county court to make the assessment and fix the tax upon appellants or either of them.

Fifth. The action of the county judge and county court in making the assessment and fixing the tax to be paid by appellants
175 and each of them is unauthorized, null, and void, because the act of the General Assembly of the State of Illinois (being an act to tax legacies and heritances, approved June 15, 1895, in force July 1, 1895) is in conflict with and in violation of the constitution of the State of Illinois and of the Constitution of the United States.

Sixth. Because said act, when attempted to be applied to and enforced against said appellants and each of them, is taking of private property without due process of law.

Seventh. The judgment appealed from against appellants and each of them is contrary to the law.

Eighth. The judgment appealed from against appellants and each of them is contrary to the evidence.

By reason whereof, and for divers other reasons apparent on the face of the record, appellants and each of them pray that said judgment may be reversed, etc.

CORNELIUS K. G. BILLINGS AND
ALBERT M. BILLINGS RUDDOCK,
By WINSTON & MEAGHER,
Their Attorneys.

176 *Cross-errors.*

And now come The People of the State of Illinois, appellee-, by Robert S. Iles, their attorney, and say that in the record and proceeding- and in rendering the judgment aforesaid there is manifest error in this, to wit:

The court erred in approving that portion of the appraiser's report herein which finds certain estates in remainder not vested and postpones the assessment of the inheritance tax thereon, by reason whereof the appellee- prays that the judgment of the said court in that behalf only may be reversed, etc.

PEOPLE OF THE STATE OF ILLINOIS,
By ROBERT ILES, *Their Attorney.*

177 And afterwards, to wit, on the 20th day of December, A. D. 1899, certain proceedings were had in said court and entered of record in the words and figures following, viz:

CORNELIUS K. G. BILLINGS and ALBERT M. Billings Ruddock *vs.* THE PEOPLE OF THE STATE OF ILLINOIS.	Appeal from County Court, Cook.

Now, on this day, come the parties hereto, and this being one of the days set apart for the call of the docket under the rules of this court, and it appearing to the court that appellant- hath filed herein a duly certified transcript of the record and proceedings of the court below, together with printed abstracts thereof, and briefs and arguments of counsel in support of the errors assigned herein, and entered motion to reverse the judgment and remand said cause and for costs, and the said appellee- having entered motion to affirm said judgment and for costs and *procedendo*, and said motions being taken under advisement for final hearing, and the clerk of this court reporting that said cause is now ready to be taken, and said cause is here submitted for the consideration and judgment of the court:

Therefore it is ordered by the court that this cause be, and the same is hereby, taken under advisement.

178 At a supreme court begun and held at Springfield on Tuesday, the fifth day of February, in the year of our Lord one thousand nine hundred and one, within and for the State of Illinois.

Present: Carroll C. Boggs, chief justice; Benjamin D. Magruder, justice; Jacob W. Wilkin, justice; —— ——, justice; Joseph N. Carter, justice; James H. Cartwright, justice; John P. Hand, justice; Howland J. Hamlin, attorney general; Charles M. Woods, sheriff.

Attest: CHRISTOPHER MAMER, *Clerk.*

Be it remembered, to wit, on the twentieth day of February, A. D. 1901, the same being in vacation after the term of court aforesaid, the following proceedings were by said court had and entered of record, to wit:

CORNELIUS K. G. BILLINGS, and ALBERT M. Billings Ruddock *v.* THE PEOPLE OF THE STATE OF ILLINOIS.	No.—. Appeal from County Court, Cook.

And now, on this day, this cause having been argued by counsel, and the court having diligently examined and inspected as well the record and proceedings aforesaid as the matters and things therein assigned for error, and being now sufficiently advised of and concerning the premises, for that it appears to the court now here that neither in the record and proceedings aforesaid nor in the rendition of the judgment aforesaid is there anything erroneous, vicious, or defective, and that in that record there is no error: therefore it is considered by the court that the judgment aforesaid be affirmed in all things and stand in full force and effect, notwithstanding the said matters and things therein assigned for error; and it is further considered by the court that the said appellees recover of and from the said appellants their costs by them in this behalf expended, and that they have execution therefor.

179 At a supreme court begun and held at Springfield on Tuesday, the fifth day of February, in the year of our Lord one thousand nine hundred and one, within and for the State of Illinois.

Present: Carroll C. Boggs, chief justice; Benjamin D. Magruder, justice; Jacob W. Wilkin, justice; —— ——, justice; Joseph N. Carter, justice; James H. Cartwright, justice; John P. Hand, justice; Howland J. Hamlin, attorney general; Charles M. Woods, sheriff.

Attest: CHRISTOPHER MAMER, *Clerk*.

Be it remembered that afterwards, to wit, on the twentieth day of February, 1901, the opinion of the court was filed in the words and figures following, to wit:

A. S. BILLINGS and C. K. G. Billings *vs.* THE PEOPLE OF THE STATE OF ILLINOIS.	No. 1201, 1202. Error to —. Appeal from County Court, Cook.

180 Dockets 1201, 1202, Agenda 82, North. Div., Dec., '99.

AUGUSTA S. BILLINGS *v.* THE PEOPLE.	
CORNELIUS K. G. BILLINGS ET AL. *v.* THE PEOPLE.	

Mr. Justice CARTER delivered the opinion of the court:

Albert M. Billings died testate in Chicago February 7, 1897, leaving a large estate. He left surviving him Augusta S. Billings, his widow, and Cornelius K. G. Billings, his son (who was married and

had two children), and Albert M. Billings Ruddock, a minor grandson, who was the son of a deceased daughter, who had intermarried with Charles H. Ruddock. He left also a son by a former marriage, Henry A. Billings. These were his only heirs. The first clause of his will was as follows: "I give unto and bequeath to my beloved wife, Augusta S. Billings, for her use and benefit during her natural life, (and at her death to be divided as hereinafter set forth,) my entire estate, both real and personal, wherever located, excepting such reservations as are hereinafter set forth and made." Then followed devises of certain real estate to his said son Cornelius, and his grandson, Albert M. Billings Ruddock, and certain annuities to his son Henry A. Billings, and to his sister. The will then provided as follows: "I do also herein give and bequeath to my son Cornelius Kingsley Garrison Billings, and to my grandson, Albert M. Billings Ruddock, to be held and owned by them at the death of my wife, Augusta S. Billings, as is hereinafter explained and set forth, all the property and estate herein bequeathed to her, my wife, not otherwise disposed of by my said executors hereinafter named, in the manner following, to wit: Two-thirds thereof to my son C. K. G. Billings, and one-third thereof to my grandson, Albert M. Billings Ruddock, to be held and owned by them, as above stated, during their lifetime; and should my son C. K. G. Billings die not leaving a living child or children of his own issue, the property herein bequeathed to him shall revert and be held and owned by my grandchild, Albert M. Billings Ruddock, during his lifetime, and should my grandson, Albert M. Billings Ruddock, die not leaving a child or children of his own issue, then all the property and estate herein bequeathed to him shall revert and become the property and
18 estate of my brother, John D. Billings, (should he be alive at that time,) and my living nephews and nieces who shall be living at the time of the death of my said grandson, as aforesaid, said brother, nieces and nephews to share and share alike in said estate. I hereby make, constitute and appoint my dear wife, Augusta S. Billings, and my dear son Cornelius Kingsley Garrison Billings, and my dear son-in-law, Charles H. Ruddock, to be the sole executors of this my last will and testament."

The widow renounced the provision made for her in the will and elected to take her dower and legal share in the estate under the statute. The county court appointed an appraiser to fix the fair market value of the estate for the purpose of assessing the inheritance tax, as provided by an act entitled "An act to tax gifts, legacies and inheritances in certain cases and to provide for the collection of the same," approved June 15, 1895. (Hurd's Stat. 1899, p. 1460.) The widow's dower, award and one-third of the personalty were appraised at the total sum of $2,363,151.75, the tax upon which, after deducting the $20,000 exemption, was fixed at $23,443.53. The life interest (as it was decreed to be) of said Cornelius in the two-thirds bequeathed to him was appraised at $2,472,118.75, and after deducting his exemption of $20,000 the tax to be paid by him was assessed at $24,821.18. This included the specific devise of real estate valued at $30,000. The life interest of Albert M. Billings

Ruddock in the one-third interest bequeathed to him was appraised at $1,408,374.77, and after deducting his exemption of $20,000 his tax was assessed at $14,043.74. This included also the tax on a specific devise to him of real estate valued at $16,000. The court, in approving the appraiser's report, found that Cornelius K. G. Billings took a life estate in the two-thirds of the residuary estate bequeathed to him, and that there was a remainder therein of the value, at the testator's death, of $864,584.70, which had not vested, and that there was a remainder in the one-third bequeathed to Albert M. Billings Ruddock for life, of the value of $250,976.95, which had not vested, and ordered that the tax on these remainders be postponed until they shall have become vested. The said Augusta S. Billings alone, and said Cornelius K. G. Billings and Albert M. Billings Ruddock together, have appealed from the order and decree assessing and fixing the amount of said tax. The two appeals will be considered together as one case.

182 The widow having renounced the life estate given her by the will in the whole estate, the estates given to the son Cornelius and the grandson, Albert, were severally accelerated, and they became entitled at once to their several interests without waiting until the death of the widow (Blatchford *v.* Newberry, 99 Ill., 11). But we shall consider first the objections to the tax interposed by the widow, Augusta S. Billings, on her appeal.

It will be seen by reference to the first section of the statute taxing inheritances, that the tax is confined to property "which shall pass by will or by the intestate laws of this State," (Hurd's Stat. 1899, p. 1460,) and it was contended below, and is contended here, that the property which came to the widow by reason of the death of her husband and of her renunciation did not pass from him either by will or the intestate laws of the State, and was not, therefore, subject to the tax. The total sum of $2,363,151.75 fixed as the value of the property which passed to the widow, was made up of $13,070 for her award, $69,266.70 for her dower, and the balance for her one-third of the personalty. It must, of course, be conceded that no part of this property passed to her on the death of Mr. Billings by his will, for she renounced the provision made for her in the will, and therefore became entitled to the same share or interest in the estate that she would have been entitled to if her husband had died intestate. Section 1 of the statute relating to dower (Hurd's Stat. 1899, p. 657) provides that "the surviving husband or wife shall be endowed of the one-third part of all of the lands whereof the deceased husband or wife was seized of an estate of inheritance, at any time during the marriage, unless the same shall have been relinquished in legal form." And section 10 of the act provides that "any devise of land, or estate therein, or any other provision made by the will of a deceased husband or wife for a surviving wife or husband, shall, unless otherwise expressed in the will, bar the dower of such survivor in the lands of the deceased, unless such survivor shall elect to and does renounce the benefit of such devise or other provision, in which case he or she shall be entitled to dower in the lands and to one-third of the personal estate, after the payment of all

debts." Section 1 of the act in regard to the descent of property (Hurd's Stat. 1899, p. 652) provides "that estates, both
183 real and personal, of residents and non-resident proprietors in this State dying intestate, or whose estates or any part thereof shall be deemed and taken as intestate estate, after all just debts and claims against such estates are fully paid, shall descend to and be distributed in manner following, to wit: * * * Fourth—When there is a widow or a surviving husband, and also a child or children or descendants of such child or children of the intestate, the widow or surviving husband shall receive, as his or her absolute personal estate, one-third of all the personal estate of the intestate."

The widow's award is provided for by the act in regard to the administration of estates. It is true, as contended, that the legal institution of dower is of great antiquity, and was not created by our statute but was fully established and provided for by the common law. Still, it is also true that it may be, and has been, not only recognized but also modified and regulated by statute. The estate by the curtesy also existed by the common law, but it has been abolished in this State and the surviving husband given the right of dower in lieu of it, and no one doubts the legislature had the power to change or abolish the estate by the curtesy. Nor can it be doubted that the institution of dower is subject to full legislative control, and may be modified or changed at any time before it has become a vested estate by the death of the spouse owning the land. (Henson *v.* Moore, 104 Ill., 403; Best *v.* Jenks, 123 *id.*, 447; Randall *v.* Kreiger, 23 Wall., 148; McNeer *v.* McNeer, 142 Ill., 388.) True, the husband cannot deprive his wife of her inchoate right of dower, but the State may. She does not hold by contract, but holds by laws which the State may change.

It is contended, however, that whatever the power of the legislature may be to control dower or to impose burdens upon it, the act imposing a tax upon inheritances, when strictly construed, as it should be, does not include dower, because, it is said, dower does not "pass by the intestate laws of this State," and the act does not, by any necessary terms, include dower. There are no laws of this State which are specifically designated as "intestate laws," and we are called upon to determine what laws or system of laws were referred to under that appellation by the act in question. The same term is employed in similar statutes in other States, and we have
184 no doubt the laws referred to are those laws of the State which govern the devolution of estates of persons dying intestate, and include all applicable rules of the common law in force in this State. The statutes from which we have above quoted are intestate laws, and they govern, regulate and control the interest which the widow, Augusta S. Billings, took in her husband's property at his death. As a general rule, the property of persons dying passes in two ways—that is, by will, or by descent in the modes provided by law; and when it does not pass by will it generally passes by law—that is, by the law governing the disposition of property of persons dying intestate.

Counsel for Mrs. Billings contend that had she taken the provis-

ion made for her by the will she would have taken as purchaser, and not as a devisee or legatee; that the provision in the will was a mere offer of the testator to purchase, for the benefit of his estate, her legal share in the estate which he could not otherwise eliminate, and that had she accepted she would have stood in the position of a purchaser for value and would not have been subject to the succession tax. In support of this view reference is made to Carper *v.* Crowl, 149 Ill., 465, and authorities there cited, and others, where it is said that "a provision by will in lieu of dower is, in fact and legal effect, a mere offer by the testator to purchase out the dower interest for the benefit of his estate." "Her relinquishment of dower forms a valuable consideration for the testamentary gifts. In this point of view she becomes a purchaser of the property left to her by the will." This doctrine need not be questioned here. It is often applied in adjusting the equities of the widow, heirs, and others succeeding to the estates of deceased persons. But we cannot agree to the view that is applicable against the State, where the question is not only one of power of the State to tax her succession to such an estate, but of the interpretation of a statute designed to exercise such power and to make the tax uniform in its operation. In a certain sense, and in her relation to the testator and those claiming under him, she may well be regarded as a purchaser, and the will and her acceptance a matter of contract or convention between them, by which she becomes entitled to the property and her rights thereto protected. But the question here is not one having reference to the adjustment of the equitable rights of different persons succeeding to the property of a de-
185 ceased person, but one arising between the claimant and the State—that is, whether or not the property falls within a general class upon which, or upon the succession to which, a tax is imposed for public revenue. The statute is comprehensive, and was designed to embrace, as nearly as practicable, all property passing from a person, upon his death, by will or intestacy, except such as the statute exempts. This is manifest from the following of the first section: "All property, real, personal and mixed, which shall pass by will or by the intestate laws of this State from any person who may die seized or possessed of the same while a resident of this State, or, if decedent was not a resident of this State at the time of his death, which property or any part thereof shall be within this State or any interest therein or income therefrom, which shall be transferred by deed, grant, sale or gift made in contemplation of the death of the grantor or bargainor or intended to take effect, in possession or enjoyment after such death, to any person or persons or to any body politic or corporate in trust or otherwise, or by reason whereof any person or body politic or corporate shall become beneficially entitled in possession or expectation to any property or income thereof, shall be and is subject to a tax at the rate hereinafter specified to be paid to the treasurer of the proper county, for the use of the State; and all heirs, legatees and devisees, administrators, executors and trustees shall be liable for any and all such taxes until the same shall have been paid as hereinafter directed. When

the beneficial interests to any property or income therefrom shall pass to or for the use of any father, mother, husband, wife, child, brother, sister, wife or widow of the son or the husband of the daughter or any child or children adopted as such in conformity with the laws of the State of Illinois or to any person to whom the deceased, for not less than ten years prior to death, stood in the acknowledged relation of a parent, or to any lineal descendant born in lawful wedlock; in every such case the rate of tax shall be one dollar on every hundred dollars of the clear market value of such property received by each person and at and after the same rate for every less amount, provided that any estate which may be valued at a less sum than $20,000 shall not be subject to any such duty or taxes; and the tax is to be levied in above cases only upon the excess of $20,000 received by each person."

186 It will be noticed that neither dower, nor any provision made in lieu of dower, is exempted, but that the wife is entitled to an exemption of $20,000,—and this the widow received the benefit of in this case. We would expect to find in such a statute, as we do find, that the classes of property would be defined only in general language. If appellants' contention were sustained, it would seem that there would have been no necessity of an exemption in the statute for the wife, for whether she accepts the provision made for her in the will or renounces it, or whether there is a will or not, her interests, according to appellants' argument, are exempt, for the reason that if she accepts she takes by purchase and not by will, and if she renounces, or in case there is no will, she takes in her own right at common law, as widow, and not under the intestate laws of the State. The argument, therefore, proves too much, and amounts to a claim that the widow cannot be taxed at all. In the case at bar the will gave the whole estate to the widow for life, and it is contended she could have taken this life estate in the whole as purchaser, and without liability to the burden of tax imposed on other life estates. If this be so, it might be pertinent to inquire whether it would not follow that Mr. Billings could have devised and bequeathed his whole estate to his wife absolutely, free from taxation under the statute. We cannot accept appellants' view, and think it unnecessary to pursue this question further. The county court properly held that the widow's dower was subject to the tax.

Counsel on both sides seem to agree that, subject to the widow's dower, and after her award and one-third of the property were set off to her, Cornelius K. G. Billings was entitled to and took two-thirds of the estate for life and Albert M. Billings Ruddock one-third for life, and the only point made on the appeal by these appellants is, that under the statute these life estates, which were so adjudged and held by the court below to be liable to the tax, were not, under the statute, liable at all. It is not denied that by section 1, standing alone, above quoted, they would be liable, but it is claimed that by section 2 they are excluded from the provisions of section 1. Section 2, or so much of it as affects this question,

187 is as follows: "When any person shall bequeath or devise any property or interest therein or income therefrom to

mother, father, husband, wife, brother and sister, the widow of the son or a lineal descendant during the life or for a term of years or remainder to the collateral heir of the decedent, or to the stranger in blood or to the body politic or corporate at their decease, or on the expiration of such term, the said life estate or estates for a term of years shall not be subject to any tax and the property so passing shall be appraised immediately after the death at what was the fair market value thereof at the time of the death of the decedent in the manner hereinafter provided, and after deducting therefrom the value of said life estate, or term of years, the tax *transcribed* by this act on the remainder shall be immediately due and payable to the treasurer of the proper county, and, together with the interests thereon, shall be and remain a lien on said property until the same is paid."

The point made is, that by the express terms of this section all life estates are exempted from the tax imposed by section 1, whether the remainder be to lineals or collaterals. But we have held that the proper reading of the clause, "or remainder to the collateral heir," etc., should be read "and remainder," etc., (Ayers *v.* Chicago Title and Trust Co., 187 Ill., 42,) and that the meaning of that provision is, that when the bequest is to the mother, father, husband, wife, brother and sister, widow of the son, or a lineal descendant, during the life or for a term of years, and remainder to the collateral heir of the decedent or to the stranger in blood, etc., such estate for life or for a term of years shall not be subject to any tax, but that where the remainder is to lineals the prior estate would, under section 1, be subject to the tax.

But it is contended that this construction renders the statute unconstitutional, under both the State and the Federal constitutions; that it violates section 2 of article 2 of the constitution of this State, which provides that "no person shall be deprived of life, liberty or property without due process of law," and section 1 of article 9, because the law imposing the tax is not "uniform as to the class upon which it operates," and the first section of the fourteenth amendment to the Constitution of the United States, which provides "that no State shall deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws." The constitutionality of the statute has been established by the decisions in several cases (Kochersperger *v.* Drake, 167 Ill., 122; Ayers *v.* Chicago Title and Trust Co., *supra;* Magoun *v.* Illinois Trust and Savings Bank, 170 U. S., 283), and we shall consider only the question whether, by the classification made, there was any arbitrary or unwarranted discrimination between life tenants by the statute imposing the tax.

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It is said that the statute discriminates between life tenants with remainder to lineal descendants and life tenants with remainder to collateral heirs, by imposing the tax on the first and excluding the second from its operation. But we cannot see that this is a mere arbitrary exaction from one class while another class, which cannot be differentiated from it, is allowed to go untaxed. A life estate

with the fee descending in the lineal line might well be more desirable than a life estate with remainder to collateral heirs or strangers to the blood. At any rate, there is a sufficient difference upon which the legislature could, without transcending its power, base a classification. It may be observed that as to the rate of tax to be imposed and the amount of the exemption the beneficiaries are divided by the first section into three classes, which, for purposes of designation, may be called,—first, the lineals; second, the collaterals; and third, the strangers to the blood. It is not questioned in this case that these differences in relationship to the decedent have been properly used by the legislature as a just and legal basis for purposes of classification, and although the constitutionality of the statute has heretofore been attacked because of such classification, it has been sustained by this court and by the Supreme Court of the United States. (Kochersperger *v.* Drake, 167 Ill., 122; Magoun *v.* Illinois Trust and Savings Bank, 170 U. S., 283.) Now, to exempt, by the second section, beneficiaries of the first class who are given only a life estate with remainder over to beneficiaries of the second or third class, is to apply the same principle of discrimination in favor of those standing nearest in relationship to the deceased owner. No life tenant falling within the second or third class is exempt, and the mere fact that life tenants of the first class, where the remainder is kept in the lineal line, are not included in the exemption does not render the statute unconstitutional for lack of uniformity as to the
189 class upon which it operates, as supposed by counsel. Section 2 does not interfere with the classification made by section 1, but recognizes it, and excludes only from the operation of that section life tenants who are beneficiaries of the first class where the remainder is given to those of the second or third class,—that is, to collateral heirs or strangers to the blood, or the body politic or corporate. It cannot be said, we think, that no reason whatever appears for the distinction made by this exemption; it may be regarded as a concession—a further exemption—to beneficiaries of the first class who are the last of their line to hold and enjoy the property; and even if it were one which the legislature had no power to make, that provision only would be void, leaving the rest of the act in full force; and such a construction would not affect the order of court appealed from nor aid appellants in their contention.

The most serious questions in the case arise on the cross-errors assigned, that the court erred in postponing the assessments of the tax on the remainder created by the will upon the termination of the life estates. The court below, and counsel in this court on both sides, have treated the interest of Cornelius K. G. Billings as only a life estate in two-thirds of the property left after the widow had received her portion, and the interest of Albert M. Billings Ruddock as only a life estate in the other third, and for the purposes of this case we shall treat the view so agreed upon as correct, and consider only whether the contingent remainders created by the will are presently taxable, or rather, whether the taxes are presently payable. The court below held that they were not, but that decision was rendered before this court had decided the case of Ayers *v.* Chicago Title and

Trust Co., *supra*, in which case we held that where property was devised to a trustee for the use of his wife and children during their lives, and after the death of all of them the remainder to be distributed according to the intestate laws of the State, both the life estates and the remainder were taxable upon the death of the testator; it was also held in that case, that expectant estates were taxable by the plain provisions of the statute, whether such expectancies were in the nature of reversions or remainders and whether vested or contingent.

All such interests are certainly taxable, as said in that case,
190 but the language there used must be construed with reference to the questions there presented. In that case the whole estate was by the will given to the trustee to manage and control, invest and reinvest, and to pay over and distribute the net income to and among the wife and children of the testator and the survivor of them, provided, however, that the children and descendants of those dying should enjoy their parents' or ancestors' share during the continuance of the trust, but that upon the death of the last survivor—that is, of the wife and children of the testator—the whole of the trust fund remaining was to go and be set apart and divided by the trustee to and between such persons as should be entitled thereto under the statute in regard to intestate estates; and the county court had decided in that case that no part of the succession tax, either on the life interests or the remainders, could be presently ascertained or collected. We reversed that decision, for it was clearly erroneous, and in doing so used language applicable to the case, and to all cases where the property or interest passing is capable of valuation and the amounts of the tax and of the exemptions are capable presently of determination. In the Ayers case the county court postponed the entire tax, holding that no part of it could then be fixed or collected. In this that court was in error. But in the case at bar the county court not only caused the estates to be appraised which passed to the widow, to the son Cornelius for his life, and to the grandson Albert for his life, and the tax to be assessed, but also, under section 2, caused to be appraised the estates which passed to the widow, to the son Cornelius for his life, and to the grandson for his life, and the tax to be assessed, but also, under section 2, caused to be appraised that part of the estate which had not vested and which cannot vest until the happening of the contingencies mentioned in the will, and postponed only the tax thereon until the same shall have become capable of being fixed and collected. In this we think the court below decided correctly, because as to those remainders or so-called reversionary interests they were incapable of valuation, and in such a case the literal language of the statute must give way to reasonable interpretation. Manifestly, it cannot be determined now whether the son Cornelius will die leaving children or a child surviving him or not, and hence it cannot now be determined whether the grandson, Albert, will take
191 a life estate or not, on the death of Cornelius, in the two-thirds bequeathed to him for life, or, if Cornelius' children should not survive him, neither may Albert, and in such case

there would be no life estate remaining in said two-thirds after the death of Cornelius. How, then, can any such life estate be now valued or the tax thereon be fixed or collected? Treating the estate of Cornelius as a life estate only, the will seems to make no bequest or devise over in case he should survive Albert and die leaving no child of his own issue surviving him. How could this possible reversionary interest be now valued and taxed? Questions practically as difficult of solution would arise as to the remainder of the one-third bequeathed to Albert. By what rule or recognized table could it be determined whether he will marry and have children who will survive him? If he shall, there will be no remainder over to the collaterals,—the uncle, the nephews and nieces; if he shall not, there will be. How can estates depending upon such contingencies be valued and taxed at the rates provided by the statutes? It is to be borne in mind that the tax is levied on the succession and not on the property as such, and the rate and the exemptions must be determined by the succession, and it would seem to follow, necessarily, that when the basis of the tax cannot be fixed the tax itself cannot be fixed. It is, however, made a lien on the property, which will continue until the uncertainties change to certainties, as they will in time, when it may be collected.

The courts of last resort in other States have found it necessary to take substantially the same view in interpreting statutes similar to the one under consideration. Among many cases, see *In re* Roosevelt's estate, 143 N. Y., 120, and *In re* Hoffman's estate, 38 N. E. Rep., 311.

The tax imposed by section 1 of our statute is fixed upon the "clear market value of the property received by each person" at the prescribed rate,—that is, as shown by the context, the clear market value of the beneficial interest so received. Surely, by such language it was not intended by the legislature that the courts should undertake to ascertain the clear market value of a mere possible interest which, from its very nature, could not have any market value, and which, for all practical purposes, such as taxation, is incapable of valuation. The courts, in order to enforce the immediate collection of such taxes, as the statute seems to contemplate shall be done,
192 cannot change the tax from one on succession to one on property; nor can they classify such remote and contingent interests, and fix the tax or rate of tax upon the whole class, as possibly the law-making power might do or provide for. No other course is left open in the practical administration of the statute than to postpone, as was done in this case, the assessing and collecting of the tax upon such remote and contingent interests as are incapable of valuation and as to which the rate and the exemptions cannot be determined. It is apparent that in many cases the tax on remainders, mentioned in section 2 as becoming immediately due and payable, can be immediately ascertained and collected; but in other cases, while, in contemplation of the statute, they are due and payable and remain a lien on the property, their payment cannot be enforced until the amount can be determined by the happening of the event or fulfillment of the conditions upon which the beneficial

estate itself is made to depend. This construction of the statute leads to its broadest, fairest and fullest enforcement, while to so construe it as to require the fixing and collection of the tax, immediately upon the death of the donor, upon all interests in property passing or to pass upon any contingency, would embarrass, and for practical purposes would defeat, the full operation of the statute.

We are of the opinion that the case was correctly decided by the county court. The order and judgment of that court will therefore be affirmed.

Judgment affirmed.

193 STATE OF ILLINOIS, } ss:
Supreme Court, }

I, Christopher Mamer, elected clerk of the supreme court in and for the northern grand division of the State of Illinois and keeper of the records and seal thereof, do hereby certify that the foregoing is a true copy of the opinion of the said supreme court in the above-entitled cause of record in my office.

This copy is not to operate as a mandate in any event. Mandate will be issued only on request and payment of costs.

In testimony whereof I have set my hand and affixed the seal of the said supreme court, at Springfield, this 23rd day of April, A. D. 1901.

[Seal of the Supreme Court, State of Illinois, Aug. 23, 1818.]

C. MAMER,
Clerk of the Supreme Court.

194 At a supreme court begun and held at Springfield on Tuesday, the second day of April, in the year of our Lord one thousand nine hundred, within and for the State of Illinois.

Present: Carroll C. Boggs, chief justice; Benjamin D. Magruder, justice; Jacob W. Wilkin, justice; —— ——, justice; Joseph N. Carter, justice; James H. Cartwright, justice; John P. Hand, justice; Howland J. Hamlin, attorney general; Charles M. Woods, sheriff.

Attest: CHRISTOPHER MAMER, *Clerk.*

Be it remembered that afterwards, to wit, on the 9th day of April, A. D. 1901, there was filed in the office of the clerk of said court a certain petition for writ of error, order allowing said writ of error, and bond for costs; which said petition, order, and bond are in the words and figures following, viz:

195 In the Supreme Court of the United States, October Term A. D. 1901.

CORNELIUS K. G. BILLINGS and ALBERT M. BILLINGS RUDDOCK
vs.
THE PEOPLE OF THE STATE OF ILLINOIS.

To the honorable the chief justice of the supreme court of the State of Illinois:

The petition of Cornelius K. G. Billings and Albert M. Billings Ruddock respectfully shows that they are citizens of the United States and of the State of Illinois, and within the jurisdiction of the State of Illinois, and residents of the county of Cook, in said State, and that on February 21, A. D. 1901, the supreme court of Illinois rendered a judgment of affirmance against your petitioners, being a final judgment, in and by which the supreme court affirmed a judgment of the county court of Cook county, State of Illinois, entered on October 19, 1899, in a proceeding begun by the People of the State of Illinois, under the provisions of and pursuant to an act of the legislature of the State of Illinois "to tax gifts, legacies, and inheritances in certain cases, and to provide for the collection of the same," approved June 15, 1895, in force July 1, 1895, and in
196 which proceeding judgment was rendered by said county court of Cook county, Illinois, against the said Cornelius K. G. Billings for the sum of twenty-four thousand eight hundred twenty-one dollars and eighteen cents ($24,821.18) and costs, and against the said Albert M. Billings Ruddock for the sum of fourteen thousand forty-three dollars and seventy-four cents ($14,043.74) and costs, as will appear by reference to the record of the proceedings in said cause; that thereupon the said Cornelius K. G. Billings and the said Albert M. Billings Ruddock prayed and perfected an appeal from said judgment to the supreme court of the State of Illinois, which last-named court, on the 21st day of February, A. D. 1901, entered the judgment of affirmance aforesaid, which said supreme court of the State of Illinois is the highest court of said State in which a decision in said suit could be had.

And your petitioners claim the right to remove said judgment to the Supreme Court of the United States by writ of error, under the statute of the United States authorizing writs of error to State courts, and being section 709 of the Revised Statutes of the United States, because your petitioners state and show unto the court the following:

The proceeding in the county court of Cook county, Illinois, instituted by the People of the State of Illinois, was for the purpose of assessing and collecting a tax alleged to be due from your petitioners under the provisions of "An act of the legislature of the State of Illinois to tax gifts, legacies, and inheritances in certain cases, and to provide for the collection of the same," approved June 15, 1895, in force July 1, 1895.

Your petitioner Cornelius K. G. Billings is the son and your pe-

titioner Albert M. Billings Ruddock is the grandson of Albert
197 M. Billings, deceased, who died testate in the city of Chicago, county of Cook, and State of Illinois, on February 7, 1897, leaving a last will and testament, which was duly proved and admitted to probate by the probate court of Cook county, Illinois, and recorded in Book 25, at page 142 thereof.

That in and by said will, after making certain bequests of certain real property in said will described, said Albert M. Billings devised to Cornelius K. G. Billings and to Albert M. Billings Ruddock all the property and estate not otherwise disposed of by his executors in said last will and testament named in the following manner, to wit, two-thirds thereof to his son, C. K. G. Billings, and one-third thereof to his grandson, Albert M. Billings Ruddock (petitioners herein), to be held and owned by them severally during the terms of their natural lives; but should testator's son, Cornelius K. G. Billings, die not leaving a living child or children of his own issue, the property in said will bequeathed to said Cornelius K. G. Billings should revert to and be held and owned by the said grandson, Albert M. Billings Ruddock, during the lifetime of said A. M. Billings Ruddock; and should said grandson, Albert M. Billings Ruddock, die not leaving a child or children of his own issue, then all the property and estate in and by said will bequeathed to him, said A. M. Billings Ruddock, should revert to and become the property and estate of one John D. Billings, brother of said Albert M. Billings, should said John D. Billings be alive at that time, and to the living nephews and nieces who should be living at the time of the death of said grandson, Albert M. Billings Ruddock, as aforesaid, said brother, nieces, and nephews to share and share alike in said estate.

198 That by said will an estate for life was devised to said Cornelius K. G. Billings in and to two-thirds of all the property and estate by said will bequeathed not otherwise disposed of by the executors of said Albert M. Billings named in said will, to be held and enjoyed by said Cornelius K. G. Billings for and during the term of his natural life, with remainder as to said two-thirds to the living child or children of said Cornelius K. G. Billings him surviving; and by said last will and testament of said Albert M. Billings an estate for life was devised to said Albert M. Billings Ruddock in and to one-third of all the property and estate by said will bequeathed not otherwise disposed of by said executors of said Albert M. Billings, to be held and enjoyed by said A. M. Billings Ruddock for and during the term of his natural life, with remainder as to said one-third to the living child or children of said A. M. Billings Ruddock him surviving.

That by said act of the legislature of the State of Illinois to "tax gifts, legacies, and inheritances in certain cases, and to provide for the collection of the same," approved June 15, 1895, in force July 1, 1895, under the authority of which act the judgment of the county court aforesaid was assessed and fixed against the said Cornelius K. G. Billings and the said Albert M. Billings Ruddock severally, as aforesaid, which judgment has been finally affirmed by the supreme court of the State of Illinois, it is provided that life estates, where

the remainder is to lineal descendants, shall be subject to the tax in and by said act prescribed and provided, but that life estates where the remainder is to collaterals or to strangers to the blood or to the body politic or corporate, shall not be subject to such tax or to any tax.

199 And your petitioners respectfully represent that, as to the life estates to them, the said Cornelius K. G. Billings and the said Albert M. Billings Ruddock, severally in and by said last will and testament devised, the said Cornelius K. G. Billings and the said Albert M. Billings Ruddock specially set up and claimed in the county court of Cook county and in the supreme court of Illinois that no assessment and tax under said act could be lawfully levied or made against them or either of them or judgment rendered against them or either of them therefor, because said assessment and all proceedings had or taken or proposed to be had or taken under said act were null and void and of no effect, and that said procedure and all steps had or taken thereunder or connected therewith, including the appointment of the appraiser therein, the making of said appraisement, and the report by the said appraiser, the assessment made and fixed by the county judge, and the judgment of the county court of Cook county aforesaid against the said Cornelius K. G. Billings and said Albert M. Billings Ruddock severally were beyond the power of said county judge and of said county court and of said supreme court; that such proceedings and all steps taken thereunder were unauthorized and not warranted by any valid statute of the State of Illinois; that the alleged appointment of said appraiser was invalid and without the sanction or authority of any valid law of the State of Illinois; that the county judge had no power or jurisdiction to appoint such appraiser, and that the assessment made, fixed, and entered by the county judge in and by the order of August 24th, 1899, and the judgment entered by the county court of Cook county, Illinois, on October 19, 1899, against the said Cornelius K. G. Billings and the said Albert M. Billings

200 Ruddock severally were severally invalid, illegal, and void, unconstitutional and of no binding force or effect and without warrant of any valid law of the State of Illinois or otherwise, because said act of the legislature of the State of Illinois "to tax gifts, legacies, and inheritances in certain cases, and to provide for the collection of the same," approved June 15, 1895, in force July 1, 1895, is in conflict with and in violation of the provisions of article 2 and article 9 of the constitution of the State of Illinois, when attempted to be enforced against the said Cornelius K. G. Billings and the said Albert M. Billings Ruddock in respect to the life estates by the said last will and testament of Albert M. Billings to them, the said Cornelius K. G. Billings and Albert M. Billings Ruddock, severally bequeathed and devised, and because said act is in conflict with and in violation of the provisions of the fourteenth amendment to the Constitution of the United States of America, when attempted to be enforced and applied against the said Cornelius K. G. Billings and the said Albert M. Billings Ruddock in respect to the said life estates to them by said will severally bequeathed and devised, and that the

making of said assessment and the fixing of said tax and the entering of said judgment by the county court of Cook county, Illinois, aforesaid, pursuant to said act, is a taking of private property without due process of law, and is a denial of the equal protection of the laws guaranteed to the said Cornelius K. G. Billings and to the said Albert M. Billings Ruddock, and, as such, in conflict with and in violation of the Constitution of the United States of America and of all amendments thereto, and particularly the fourteenth amendment thereto; all which contentions were specially set up,
201 presented, and claimed by your petitioners in the supreme court of Illinois.

But your petitioners respectfully show unto the court that all which contentions so, as aforesaid, by them presented and made to the county court and the supreme court of the State of Illinois were overruled, set aside, and held for naught by said county court of Cook county and the supreme court of the State of Illinois, and the tax upon the life estate of your petitioner Cornelius K. G. Billings, as devisee under the will of his father, fixed and determined by the county court of Cook county, Illinois, at the sum of twenty-four thousand eight hundred and twenty-one dollars and eighteen cents ($24,821.18) and costs, and judgment for said amount rendered by said county court of Cook county, Illinois, on the 19th day of October, 1899, against the said Cornelius K. G. Billings, and the tax upon the life estate of your petitioner Albert M. Billings Ruddock, as devisee under the will of his grandfather, fixed and determined by the county court of Cook county, Illinois, at the sum of fourteen thousand forty-three dollars and seventy-four cents ($14,043.74) and costs, and judgment for said amount rendered by said county court of Cook county on said 19th day of October, 1899, against the said Albert M. Billings Ruddock; which judgment has been by the supreme court of the State of Illinois finally affirmed in all things; all of which appears by the record of the proceedings in said cause, which is herewith submitted.

And your petitioners show unto the court, as reasons for which the writ of error is prayed in said cause, the following:

(*a.*) That said act of the legislature of the State of Illinois, when applied to and enforced against your petitioners, life tenants under the last will and testament of Albert M. Billings, deceased,
202 abridges the privileges and immunities of your petitioners, secured to them severally by the Constitution of the United States of America and amendments thereto.

(*b.*) That said act deprives your petitioners, life tenants, as aforesaid, of their property without due process of law.

(*c.*) That said act denies to your petitioners severally, citizens of the United States and of the State of Illinois, the equal protection of the laws guaranteed to them by the fourteenth amendment to the Constitution of the United States of America.

(*d.*) That the said judgment entered by the supreme court of Illinois against your petitioners, as aforesaid, is a taking of the property of your petitioners without due process of law, and is a denial to them severally of the equal protection of the laws, forbidden by section 1

of the fourteenth amendment to the Constitution of the United States of America.

(*e.*) The validity of said act of the legislature of the State of Illinois to "tax gifts, legacies, and inheritances in certain cases, and to provide for the collection of the same," approved June 15, 1895, in force July 1, 1895, is drawn in question by your petitioners, by proper pleading or objection, on the ground of being repugnant to the Constitution of the United States and amendments thereto, and the decision of the supreme court of the State of Illinois is in favor of the validity of said act or statute and against the objection and contention of plaintiffs in error.

(*f.*) That in said suit a right, privilege, and immunity is specially set up and claimed by your petitioners under the Constitution of the United States, and the decision was against the said right, privilege, and immunity.

203 (*g.*) That said judgment so rendered by the supreme court of the State of Illinois is against your petitioners and is a final judgment in said suit.

(*h.*) That in said judgment of the supreme court there is error to the damage and prejudice of your petitioners and to each of them.

(*i.*) That said judgment is contrary to and repugnant to the Constitution of the United States of America.

CORNELIUS K. G. BILLINGS,
ALBERT M. BILLINGS RUDDOCK,
Petitioners,

By WINSTON & MEAGHER,
Attorneys for Petitioners.

FREDERICK S. WINSTON,
JAMES F. MEAGHER,
Attorneys for Petitioners, Plaintiffs in Error.

204 In the Supreme Court of Illinois, February Term, A. D. 1901.

CORNELIUS K. G. BILLINGS, ALBERT M. BILLINGS RUDDOCK, Plaintiffs in Error,
versus
THE PEOPLE OF THE STATE OF ILLINOIS, Defendant in Error.

Now, on this 9th day of April, A. D. 1901, come Cornelius K. G. Billings and Albert M. Billings Ruddock, and file their petition herein, in which it is stated that on February 21st, 1901, the supreme court of the State of Illinois entered a judgment against them in a certain cause wherein the said Cornelius K. G. Billings and Albert M. Billings Ruddock were appellants and The People of the State of Illinois were appellees; and it being represented in said petition that in the opinion filed in said cause in the supreme court of said State, as well as on a hearing of said cause before the appraiser appointed therein, the county judge who made the assessment in said proceeding, and the county court of Cook county, there was drawn in question the validity and constitutionality of a statute, it being alleged

in said petition and in said proceeding, when heard before the appraiser, the county judge, the county court, and the supreme court of Illinois, that such statute was in violation of the Constitution of the United States, and the proceedings had thereunder and the judgment rendered in said cause *was* a taking of private property without due process of law and *was* a denial of the equal protection of the laws to said Cornelius K. G. Billings and Albert M. Billings Ruddock, and it appearing that it was held in said opinion adverse to the claim as made in the said petition and as claimed before said appraiser, the county judge, the county court of Cook county, and the supreme court of Illinois, and it therefore appearing that a Federal question is involved in this proceeding—

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Therefore ordered that a writ of error be allowed from this court to the Supreme Court of the United States upon petitioners herein filing bond in the sum of forty-five thousand dollars, with Augusta S. Billings as surety.

CARROLL C. BOGGS,
Chief Justice of the Supreme Court of the State of Illinois.

206 Know all men by these presents that we, Cornelius K. G. Billings and Albert M. Billings Ruddock, as principals, and Augusta S. Billings, as surety, are held and firmly bound unto the People of the State of Illinois in the full and just sum of forty-five thousand dollars ($45,000), to be paid to the county treasurer of Cook county, State of Illinois, for the People of the State of Illinois, pursuant to an act of the legislature of the State of Illinois to tax gifts, legacies, and inheritances in certain cases, and to provide for the collection of the same, approved June 15, 1895, in force July 1, 1895; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this eighth day of April, in the year of our Lord one thousand nine hundred and one.

Whereas lately, at a session of the supreme court of Illinois, in a suit pending in said court between the said Cornelius K. G. Billings and Albert M. Billings Ruddock, appellants, and The People of the State of Illinois, appellees, a final judgment was rendered against the said Cornelius K. G. Billings and the said Albert M. Billings Ruddock, and the said Cornelius K. G. Billings and Albert M. Billings Ruddock having obtained the allowance of an appeal or writ of error and filed a copy thereof in the clerk's office of said court, to reverse the judgment in the aforesaid suit, and a citation directed to the said People of the State of Illinois, served upon the governor of the State of Illinois and the attorney general of said State, citing and admonishing The People of the State of Illinois to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date thereof:

Now, the condition of the above obligation is such that if the said Cornelius K. G. Billings and Albert M. Billings Ruddock shall

prosecute said writ of error to effect and answer all damages
207 and costs if they shall fail to make their appeal good, then the above obligation to be void; else to remain in full force and virtue.

ALBERT M. BILLINGS RUDDOCK, [SEAL.]
By C. K. G. BILLINGS.
CORNELIUS K. G. BILLINGS. [SEAL.]
AUGUSTA S. BILLINGS. [SEAL.]

Signed and delivered in the presence of—
ROBERT L. BENSON.
SILAS H. STRAWN.

Approved, to operate as a supersedeas, by—
CARROLL C. BOGGS,
Chief Justice of the Supreme Court of the State of Illinois.

The above bond is satisfactory to the defendant in error.
JULIUS A. JOHNSON,
FRANK L. SHEPARD,
Attorneys for Appellee.

208 *Assignment of Errors.*

In the Supreme Court of the United States, October Term, 1901.

CORNELIUS K. G. BILLINGS, ALBERT M. Billings Ruddock, Plaintiffs in Error, *versus* THE PEOPLE OF THE STATE OF ILLINOIS, Defendant in Error. } Error to the Supreme Court of the State of Illinois.

Come now Cornelius K. G. Billings and Albert M. Billings Ruddock, plaintiffs in error, by their counsel, and respectfully represent that they feel themselves to be aggrieved by the proceedings and judgment of the supreme court of Illinois in the above-entitled cause, and say that in the proceedings aforesaid and in the judgment of said court there is manifest error, in this, to wit:

First. The supreme court of Illinois erred in holding and ruling that the act of the legislature of the State of Illinois, entitled "An act to tax gifts, legacies, and inheritances in certain cases, and to provide for the collection of the same," approved June 15, 1895, in force July 1, 1895, is a valid and constitutional enactment, which does not abridge the privileges and immunities of plaintiffs in error, Cornelius K. G. Billings and Albert M. Billings Ruddock, who are citizens of the United States and of the State of Illinois and within the jurisdiction of the State of Illinois, life tenants under the last will and testament of Albert M. Billings, deceased, secured to them and each of them by the Constitution of the United States of America and amendments thereto.

Second. The supreme court of Illinois erred in refusing to hold

the contention of plaintiffs in error, specifically set up and
209 relied on in the county court of Cook county and the supreme court of Illinois, that said act, when attempted to be applied to and enforced against plaintiffs in error, life tenants under the last will of Albert M. Billings, deceased, was a denial of the equal protection of the laws, and therefore repugnant to the fourteenth amendment to the Constitution of the United States of America.

Third. The supreme court of Illinois erred in holding and ruling that said act did not abridge the privileges and immunities of plaintiffs in error, life tenants under the last will and testament of Albert M. Billings, deceased, secured to them and each of them by article II and article IX of the constitution of the State of Illinois, in and by which holding the supreme court denied to plaintiffs in error, citizens within the jurisdiction of the State of Illinois, the equal protection of the laws, guaranteed to them and each of them by the fourteenth amendment to the Constitution of the United States of America.

Fourth. The supreme court of Illinois erred in holding and ruling that the assessment and tax levied upon plaintiffs in error, life tenants under the last will and testament of Albert M. Billings, deceased, pursuant to the provisions of said act, was not a taking of private property without due process of law and was not repugnant to the provisions of the fifth and fourteenth amendments to the Constitution of the United States of America.

Fifth. The supreme court of Illinois erred in affirming the ruling and judgment of the county court of Cook county in overruling the objections of plaintiffs in error, made in that court, to the constitutionality and validity of said act, and in fixing and determining the tax to be paid by plaintiffs in error severally, and in holding that such procedure was not a taking of private property without due process of law and was not a denial of the equal protection of the laws to plaintiffs in error and each of them.

Sixth. The supreme court of Illinois erred in not holding and ruling that said act was unconstitutional and void when en-
210 forced against plaintiffs in error, life tenants under the last will and testament of Albert M. Billings, deceased, and was a taking of the private property of plaintiffs in error without due process of law, and was a denial of the equal protection of the laws guaranteed to plaintiffs in error by the fifth and fourteenth amendments to the Constitution of the United States of America, specifically set up and relied on by plaintiffs in error in the county court of Cook county and the supreme court of Illinois, as shown by the record and proceedings in the above-entitled cause.

Seventh. The supreme court of Illinois erred in holding and ruling that, pursuant to the provisions of said act, it is lawful to levy, assess, and collect a tax from plaintiffs in error, life tenants under the last will and testament of Albert M. Billings, deceased, with remainder to lineals, while no such tax nor any tax under said act can be levied upon or against or collected from life tenants where the remainder is to collaterals or strangers to the blood or to the body politic or corporate, for the reason that such a law is a

denial of the equal protection of the laws to plaintiffs in error and is repugnant to the Constitution of the United States of America and the fourteenth amendment thereto.

Eighth. The supreme court of Illinois erred in refusing to sustain the fifth and sixth assignments of error of plaintiff- in error in the supreme court of Illinois, and in overruling said assignments of error and each of them severally.

Ninth. The supreme court erred in not holding that by said act or statute plaintiffs in error were deprived of property without due process of law.

Tenth. The supreme court erred in holding and ruling that said act or statute affords the equal protection of the laws to persons within the jurisdiction of the State of Illinois.

Eleventh. The supreme court erred in not holding and ruling that by the said act the State of Illinois has denied and denies to persons within its jurisdiction, citizens of said State and of
211 the United States, the equal protection of the laws.

Twelfth. The supreme court erred in not holding and ruling that the said act abridges the privileges of plaintiffs in error, who are citizens of the United States and of the State of Illinois.

Thirteenth. The supreme court erred in not deciding that said act abridges the immunities of plaintiffs in error, who are citizens of the United States and of the State of Illinois.

Fourteenth. The supreme court erred in not reversing the judgment of the county court of Cook county, in the State of Illinois, and in entering judgment against the plaintiffs in error.

Fifteenth. The supreme court of Illinois erred in rendering judgment against plaintiffs in error, life tenants under the last will and testament of Albert M. Billings, deceased, in manner and form as shown by the record and proceedings in the above-entitled cause.

Sixteenth. The supreme court erred, in that said judgment is contrary to law.

Seventeenth. The supreme court erred, in that said judgment is repugnant to and in conflict with and in violation of the provisions of the Constitution of the United States of America.

Wherefore the said Cornelius K. G. Billings and Albert M. Billings Ruddock, plaintiffs in error, pray this honorable court to examine and correct the errors assigned for the reversal of the judgment of the supreme court of the State of Illinois, and of the county court of Cook county, Illinois, entered in the above-entitled cause.

CORNELIUS K. G. BILLINGS,
ALBERT M. BILLINGS RUDDOCK,
By WINSTON & MEAGHER,
Their Attorneys.

FREDERICK S. WINSTON,
JAMES F. MEAGHER,
Attorneys for Petitioners, Plaintiffs in Error.

Endorsed on cover: File No., 18,178. Illinois supreme court. Term No., 332. Cornelius K. G. Billings and Albert M. Billings Ruddock, plaintiffs in error, *vs.* The People of the State of Illinois. Filed May 23, 1901.

No. 106.

Brf. of Meagher & Guthrie for P. E.

Office Supreme Court
FILED
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JAMES H. McKENNEY
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Filed Nov. 17, 1902.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1902.

CORNELIUS K. G. BILLINGS and ALBERT M. BILLINGS RUDDOCK, *Plaintiffs in Error,* vs. THE PEOPLE OF THE STATE OF ILLINOIS.	Error to the Supreme Court of Illinois.

BRIEF AND ARGUMENT FOR PLAINTIFFS IN ERROR.

JAMES F. MEAGHER,
WILLIAM D. GUTHRIE,
Of Counsel for plaintiffs in error.

18178.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1902.

CORNELIUS K. G. BILLINGS and ALBERT M. BILLINGS RUDDOCK, *Plaintiffs in Error*, vs. THE PEOPLE OF THE STATE OF ILLINOIS.	Error to the Supreme Court of Illinois.

BRIEF AND ARGUMENT FOR PLAINTIFFS IN ERROR.

STATEMENT OF FACTS.

The question involved in this case raises the constitutionality, under the fourteenth amendment of the Constitution of the United States, of a portion of the Illinois Inheritance Tax Act. The question now presented to this court was not involved or decided in *Magoun* v. *Illinois Trust and Savings Bank*, 170 U. S., 283.

The statutory provisions in question are as follows (Starr and Curtis's Annotated Illinois Statutes, pp. 3528-3529):

§ 1. ALL PROPERTY, REAL, PERSONAL AND MIXED WHICH SHALL PASS BY WILL OR BY THE INTESTATE LAWS OF THIS STATE FROM ANY PERSON WHO MAY DIE SEIZED

OR POSSESSED OF THE SAME WHILE A RESIDENT OF THIS STATE OR, IF DECEDENT WAS NOT A RESIDENT OF THIS STATE AT THE TIME OF HIS DEATH, WHICH PROPERTY OR ANY PART THEREOF SHALL BE WITHIN THIS STATE OR ANY INTEREST THEREIN OR INCOME THEREFROM, WHICH SHALL BE TRANSFERRED BY DEED, GRANT, SALE OR GIFT MADE IN CONTEMPLATION OF THE DEATH OF THE GRANTOR OR BARGAINOR OR INTENDED TO TAKE EFFECT, IN POSSESSION OR ENJOYMENT AFTER SUCH DEATH, TO ANY PERSON OR PERSONS OR TO ANY BODY POLITIC OR CORPORATE IN TRUST OR OTHERWISE, OR BY REASON WHEREOF ANY PERSON OR BODY POLITIC OR CORPORATION SHALL BECOME BENEFICIALLY ENTITLED IN POSSESSION OR EXPECTATION TO ANY PROPERTY OR INCOME THEREOF, SHALL BE, AND IS, SUBJECT TO A TAX AT THE RATE HEREINAFTER SPECIFIED TO BE PAID TO THE TREASURER OF THE PROPER COUNTY FOR THE USE OF THE STATE, AND ALL HEIRS, LEGATEES AND DEVISEES, ADMINISTRATORS, EXECUTORS AND TRUSTEES SHALL BE LIABLE FOR ANY AND ALL SUCH TAXES UNTIL THE SAME SHALL HAVE BEEN PAID AS HEREINAFTER DIRECTED. WHEN THE BENEFICIAL INTERESTS TO ANY PROPERTY OR INCOME THEREFROM SHALL PASS TO OR FOR THE USE OF ANY FATHER, MOTHER, HUSBAND, WIFE, CHILD, BROTHER, SISTER, WIFE OR WIDOW OF THE SON OR THE HUSBAND OF THE DAUGHTER, OR ANY CHILD OR CHILDREN ADOPTED AS SUCH IN CONFORMITY WITH THE LAWS OF THE STATE OF ILLINOIS, OR TO ANY PERSON TO WHOM THE DECEASED, FOR NOT LESS THAN TEN YEARS PRIOR TO DEATH, STOOD IN THE ACKNOWLEDGED RELATION OF A PARENT, OR TO ANY LINEAL DESCENDANT BORN IN LAWFUL WEDLOCK, IN EVERY SUCH CASE THE RATE OF TAX SHALL BE ONE DOLLAR ON EVERY HUNDRED DOLLARS OF THE CLEAR MARKET VALUE OF SUCH PROPERTY RECEIVED BY EACH PERSON AND AT AND AFTER THE SAME RATE FOR EVERY LESS AMOUNT, PROVIDED THAT ANY ESTATE WHICH MAY BE VALUED AT A LESS SUM THAN TWENTY THOUSAND DOLLARS SHALL NOT BE SUBJECT TO ANY SUCH DUTY OR TAXES, AND THE TAX IS TO BE LEVIED IN ABOVE CASES ONLY UPON THE EXCESS OF TWENTY THOUSAND DOLLARS RECEIVED BY EACH PERSON.

WHEN THE BENEFICIAL INTERESTS TO ANY PROPERTY OR INCOME THEREFROM SHALL PASS TO OR FOR THE USE OF ANY UNCLE, AUNT, NIECE, NEPHEW OR ANY LINEAL DESCENDANT OF THE SAME, IN EVERY SUCH CASE THE RATE OF SUCH TAX SHALL BE TWO DOLLARS ON EVERY ONE HUNDRED DOLLARS OF THE CLEAR MARKET VALUE OF SUCH PROPERTY RECEIVED BY EACH PERSON ON THE EXCESS OF TWO THOUSAND DOLLARS SO RECEIVED BY EACH PERSON. IN ALL OTHER CASES THE RATE SHALL BE AS FOLLOWS: ON EACH AND EVERY HUNDRED DOLLARS OF THE CLEAR MARKET VALUE OF ALL PROPERTY AND AT THE SAME RATE FOR ANY LESS AMOUNT; ON ALL ESTATES OF TEN THOUSAND DOLLARS AND LESS, THREE DOLLARS; ON ALL ESTATES OF OVER TEN THOUSAND DOLLARS AND NOT EXCEEDING TWENTY THOUSAND DOLLARS, FOUR DOLLARS; ON ALL ESTATES OVER TWENTY THOUSAND DOLLARS AND NOT EXCEEDING FIFTY THOUSAND DOLLARS, FIVE DOLLARS, AND ON ALL ESTATES OVER FIFTY THOUSAND DOLLARS, SIX DOLLARS: PROVIDED, THAT AN ESTATE IN THE ABOVE CASE WHICH MAY BE VALUED AT A LESS SUM THAN FIVE HUNDRED DOLLARS SHALL NOT BE SUBJECT TO ANY DUTY OR TAX.

§ 2. WHEN ANY PERSON SHALL BEQUEATH OR DEVISE ANY PROPERTY OR INTEREST THEREIN OR INCOME THEREFROM TO MOTHER, FATHER, HUSBAND, WIFE, BROTHER AND SISTER, THE WIDOW OF THE SON, OR A LINEAL DESCENDANT DURING THE LIFE OR FOR A TERM OF YEARS OR(AND)REMAINDER TO THE COLLATERAL HEIR OF THE DECEDENT, OR TO THE STRANGER IN BLOOD OR TO THE BODY POLITIC OR CORPORATE AT THEIR DECEASE, OR ON THE EXPIRATION OF SUCH TERM, THE SAID LIFE ESTATE OR ESTATES FOR A TERM OF YEARS SHALL NOT BE SUBJECT TO ANY TAX AND THE PROPERTY SO PASSING SHALL BE APPRAISED IMMEDIATELY AFTER THE DEATH AT WHAT WAS THE FAIR MARKET VALUE THEREOF AT THE TIME OF THE DEATH OF THE DECEDENT IN THE MANNER HEREINAFTER PROVIDED, AND AFTER DEDUCTING THEREFROM THE VALUE OF SAID LIFE ESTATE, OR TERM OF YEARS, THE TAX TRANSCRIBED BY THIS ACT ON THE REMAINDER SHALL BE IMMEDIATELY DUE AND

PAYABLE TO THE TREASURER OF THE PROPER COUNTY, AND, TOGETHER WITH THE INTERESTS THEREON, SHALL BE AND REMAIN A LIEN ON SAID PROPERTY UNTIL THE SAME IS PAID: PROVIDED, THAT THE PERSON OR PERSONS OR BODY POLITIC OR CORPORATE BENEFICIALLY INTERESTED IN THE PROPERTY CHARGEABLE WITH SAID TAX ELECT NOT TO PAY THE SAME UNTIL THEY SHALL COME INTO THE ACTUAL POSSESSION OR ENJOYMENT OF SUCH PROPERTY, OR, IN THAT CASE SAID PERSON OR PERSONS OR BODY POLITIC OR CORPORATE SHALL GIVE A BOND TO THE PEOPLE OF THE STATE OF ILLINOIS IN THE PENALTY THREE TIMES THE AMOUNT OF THE TAX ARISING UPON SUCH ESTATE WITH SUCH SURETIES AS THE COUNTY JUDGE MAY APPROVE, CONDITIONED FOR THE PAYMENT OF THE SAID TAX, AND INTEREST THEREON, AT SUCH TIME OR PERIOD AS THEY OR THEIR REPRESENTATIVES MAY COME INTO THE ACTUAL POSSESSION OR ENJOYMENT OF SAID PROPERTY, WHICH BOND SHALL BE FILED IN THE OFFICE OF THE COUNTY CLERK OF THE PROPER COUNTY: PROVIDED, FURTHER, THAT SUCH PERSON SHALL MAKE A FULL, VERIFIED RETURN OF SAID PROPERTY TO SAID COUNTY JUDGE, AND FILE THE SAME IN HIS OFFICE WITHIN ONE YEAR FROM THE DEATH OF THE DECEDENT, AND WITHIN THAT PERIOD ENTER INTO SUCH SECURITIES AND RENEW THE SAME FOR FIVE YEARS."

As appears from the record, Albert M. Billings, for many years a resident of the City of Chicago, died in that city on February 7, 1897, leaving a last will and testament, dated October 6 , 1890, which was duly filed, proved and admitted to probate in the Probate Court of Cook County on February 15, 1897. Mr. Billings left him surviving a widow, Augusta S. Billings; a son, Cornelius K. G. Billings, who is one of the plaintiffs in error, born September 16, 1861, the issue of his marriage with said Augusta S. Billings; a grandson, Albert M. Billings Ruddock, who is the other plaintiff in error,

born January 13, 1886, son of Sarah A. Billings, daughter of the said Albert M. Billings and Augusta S. Billings, which daughter was deceased prior to the death of said Albert M. Billings, and Henry A. Billings, a son, born in the year 1837, his only heirs at law. The son, Cornelius K. G. Billings, intermarried with Blanche Elizabeth McLeish, and has had two children born to him, the issue of said marriage, Blanche Pauline Billings, born June 25, 1886, and Albert M. Billings, Jr., a son, born November 15, 1894; the widow and heirs above named are now living. (record, 14, 59.) No question arises on this record in respect of Henry A. Billings. (record, 59-61.)

By his last will and testament, Albert M. Billings devised and bequeathed to his "wife, Augusta S. Billings, for her use and benefit during her natural life (and at her death to be divided as hereinafter set forth), my entire estate, both real and personal, wherever located," excepting such reservations as were thereinafter set out and made, after which the will proceeded:

> "I do also herein give and bequeath to my son Cornelius Kingsley Garrison Billings, and to my grandson Albert M. Billings Ruddock, to be held and owned by them at the death of my wife Augusta S. Billings as is hereinafter explained and set forth, all the property and estate herein bequeathed to her my wife not otherwise disposed of by my said exeecutors hereinafter named, in the manner following to wit: Two-thirds thereof to my son C. K. G. Billings and one-third thereof to my grandson Albert M. Billings Ruddock to be held and owned by them as above stated during their lifetime, and should my son C. K. G. Billings die, not leaving a living child or children of his own issue, the property herein bequeathed to him shall revert and be held and owned by my grandchild Albert M. Billings Ruddock during his lifetime, and should

> my grandson Albert M. Billings Ruddock die not leaving a child or children of his own issue, then all the property and estate herein bequeathed to him shall revert and become the property and estate of my brother John D. Billings (should he be alive at that time) and my living nephews and nieces who shall be living at the time of the death of my said grandson, as aforesaid, said brother, nieces and nephews to share and share alike in said estate." (record, 60.)

There was thus created a life estate in the widow in the entire estate; and at her death, a life estate in the son, Cornelius K. G. Billings, in two-thirds, and in the grandson, Albert M. Billings Ruddock, in one-third, of all the property bequeathed to the wife, not otherwise disposed of by the executors.

The widow duly renounced in writing the provision made for her in said will, and elected to take, in lieu thereof, her dower and legal share of said estate, pursuant to the Illinois statute. (Chap. 41, par. 10, p. 1464, Starr and Curtis.) The widow having renounced, and having received her legal share of said estate, the life estates in the son and grandson in the residue were, severally, accelerated, and they became entitled at once to their several interests, without awaiting the death of the widow.

The county judge originally, and subsequently the County Court of Cook County, entered a judgment order assessing the tax to be paid by Cornelius K. G. Billings upon his life interest, at the sum of $24,821.18, and by the grandson, Albert M. Billings Ruddock, upon his life interest, at the sum of $14,043.94, and ordered that the tax upon nearly $1,100,000, part of the estate of said Albert M. Billings, should be postponed until certain estates of $846,584.70, and $250,976.95, severally, should be vested. These amounts represent the difference

after setting off to the widow her legal share, between the actual value of the residue and remainder of the estate of Albert M. Billings, and the value of the life estate of the son, Cornelius K. G. Billings, in two-thirds thereof, estimated to be $846,584.70, and the like difference in the case of the grandson, Albert M. Billings Ruddock, estimated to be $250,976.95. (record, 74, 77.)

The Federal question was duly raised by plaintiffs in error at every step taken in the procedure which finally resulted in the Supreme Court of Illinois, the highest court of the state, affirming the judgment entered against the plaintiffs in error, which court, in February, 1901, upheld the state statute, overruled the exceptions and objections of the plaintiffs in error, and affirmed the judgment of the court below, and the decision of the state court was in favor of the statute within the meaning of Section 709 of the United States Revised Statutes. Plaintiffs in error then sued out a writ of error, which was duly allowed in due form by the chief justice of the state, and thus the judgment was brought to this court for review. (record, 1, 18, 82, 90, 97, 105, 112, 116.)

In its opinion (189 Ill., 472, 482), the Illinois Supreme Court said:

> "We have held that the proper reading of the clause, 'or remainder to the collateral heir,' etc., should be read, '*and* remainder,' etc. (*Ayers* v. *Chicago Title and Trust Co.*, 187 Ill., 42,) and that the meaning of that provision is, that when the bequest is to the mother, father, husband, wife, brother and sister, widow of the son, or a lineal descendant, during the life or for a term of years, and remainder to the collateral heir of the decedent or to the stranger in blood, etc., such estate for a life or for a term of years shall not be subject to any tax, but that where the remainder is to lineals the prior estate would, under section 1, be subject to the tax.

But it is contended that this construction renders the statute unconstitutional, under both the State and the Federal constitutions; that it violates section 2 of article 2 of the constitution of this State, which provides that 'no person shall be deprived of life, liberty or property without due process of law,' and section 1 of article 9, because the law imposing the tax is not 'uniform as to the class upon which it operates,' and the first section of the fourteenth amendment to the Constitution of the United States, which provides 'that no State shall deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.' The constitutionality of the statute has been established by the decisions in several cases (*Kochersperger* v. *Drake,* 167 Ill., 122; *Ayers* v. *Chicago Title and Trust Co., supra; Magoun* v. *Illinois Trust and Savings Bank,* 170 U. S., 283), and we shall consider only the question whether, by the classification made, there was any arbitrary or unwarranted discrimination between life tenants by the statute imposing the tax." (record, 105.)

Assignment of Error.

1. That the statute is in contravention of the fourteenth amendment to the Constitution of the United States of America, in that the classification of life tenants is arbitrary and unreasonable, and denies to the plaintiffs in error, as life tenants, the equal protection of the laws; because the statute, as interpreted and enforced by the state courts, taxes life estates where the remainder is to lineals, but does not tax, and expressly exempts, similar life estates where the remainder is to collaterals or to strangers in blood.

I.

The Supreme Court of Illinois, in *Ayers* v *Chicago Title and Trust Co.,* 187 Ill., 42 (pp. 51-53), held

that a life tenant where the remainder was to the collateral heir of the decedent, or to the stranger in blood, was not taxable under this statute. This holding was reaffirmed in the Billings case when that case was before the court (record, 105). The ruling of the Supreme Court of Illinois, therefore, is to the effect that a life tenant, where the remainder is to lineals, is taxable under the act in question, but that a life tenant, where the remainder is to the collateral heir, or to the stranger in blood, is not taxable.

The question in the case at bar, therefore, is whether a state legislature may validly enact that of two life tenants succeeding to property at the same time, to the same extent, under the same circumstances and conditions, the one may be taxed on the right or privilege of succession, and the other be absolved from all taxes on the like right of succession, determined solely by the disposition of the remainder in which the life tenant has no interest or concern whatsoever.

The considerations which are to determine this inquiry are concisely stated by Mr. Justice McKenna, delivering the opinion of the court, in *Magoun* v. *Illinois Trust & Savings Bank*, 170 U. S., 283, where the same act was under review:

> "Our inquiry must be not what will satisfy the provisions of the state constitutions, but what will satisfy the rule of the Federal Constitution. The power of the States over successions may be as plenary in the abstract as appellee contends for, nevertheless it must be exerted within the limitations of that constitution. If the power of devise or of inheritance be a privilege, it must be conferred or regulated by equal laws. * * *
>
> "Two principles, therefore, must be reconciled in the Illinois inheritance law if it is to be sustained,

> the equality of protection of the laws guaranteed by the Fourteenth Amendment, and the power of the State to classify persons and property. The latter principle needs further consideration. What test is there of the reasonableness of a classification—of one based upon 'some difference which bears a just and proper relation to the attempted classification—and is not a mere arbitrary selection?' Legislation, special in character, is not forbidden by it, as we have seen. Treating mechanics as a class, and giving them a lien for the amount of their work, has been held reasonable. Charging a railroad corporation and not other corporations or persons with an attorney's fee has been held unreasonable, yet the former would seem to be as much an exclusive favor as the latter an exclusive burden."

In order to test the reasonableness of the Illinois Act, we may take illutrations suggested by its provisions.

Let us, for example, suppose the ancestor to provide by will that his estate should be equally divided between his sons A and B for life, severally; remainder as to A's moiety to the lineal descendants of testator, and remainder as to B's moiety to the living nephews and nieces of the testator. Under the Illinois law A is taxed and B is exempted. Both exercise, under the law of the State of Illinois, the same privilege, at the same time, in the same manner, and to the same extent, and one is taxed for exercising that privilege, whilst his brother is not taxed for exercising precisely the same privilege.

Or, an ancestor dying seized of a million of money might provide by will that his son A should receive $50,000 for life, with remainder to the lineal descendants of the testator; while to B he bequeaths $950,000 for life, with remainder to the living nephews and nieces of testator. Under this law A is taxed and B is not taxed. Both exercise the same privilege, so far as the privilege itself is concerned, which is that of

succeeding to property. The same right is exercised by both A and B. The state permits B to succeed to nearly twenty times as much as A without the imposition of a farthing of tax upon the exercise of the privilege, while A is taxed. The illustration may be extreme, but it is clearly within the possible operation of the law.

The plaintiffs in error do not question the power of the legislature to classify, where the distinctions made are based on some reasonable ground—some difference which bears a just and proper relation to the attempted classification,—but do contend that no legal system of classification can be devised which classifies or distinguishes the constituents of one class. Life tenants, as indicated in the act in question, are those persons holding a particular kind of freehold estates.

A life tenant when he succeeds to property, under a testamentary devise, does so irrespective of what may be the ultimate vesting of the remainder; he succeeds to precisely the same volume of estate, whether the remainder be limited to the lineal descendants or to the collateral heirs of the testator, or to the stranger in blood. In other words, the volume, the extent and the incidents of a life tenancy are wholly unaffected by the ultimate vesting of the remainder, whether that be in a lineal descendant of the testator, or in a collateral heir, or in a stranger to the blood. In the illustration first given, A's estate is no other than or different from B's. Each has a life estate with all the incidents the law attaches thereto, and no more and no less. At the termination of A's life, his interest and estate ceases. The same is true on the termination of B's life. Neither has any control whatever over the remainder, and neither had any option in the creation of either the life estate or of the vesting of the remainder. In succeeding to the property devised to them, both exercise a privilege conferred upon them, severally, by the State of

Illinois, at the same time, in the same manner, to the same extent and under like circumstances, and one is taxed for exercising the privilege and the other is not taxed for exercising the same privilege. As Judge Cooley forcibly said, in his Constitutional Limitations: "A statute would not be constitutional * * * which should select particular individuals from a class or locality, and subject them to peculiar rules, or impose upon them special obligations or burdens from which others in the same locality or class are exempt. * * * Everyone has the right to demand that he be governed by general rules, and a special statute which, without his consent, singles his case out as one to be regulated by a different law from that which is applied in all similar cases, would not be legitimate legislation, but would be such an arbitrary mandate as is not within the province of free governments. Those who make the laws are to govern by promulgated established laws, not to be varied in particular cases, but to have one rule for rich and poor, for the favorite at court, and the countryman at the plough."[1]

The right of succession, as long as it exists, as long as it is granted to anybody, must be recognized as a property right, of pecuniary value, and must be granted impartially and by general laws.

The privilege of succeeding to life estates is, of course, a valuable one, and a property right. When the state confers this privilege, it must do so in such manner that all persons in the same class shall be treated alike both in the privilege conferred and the burden imposed; and if the courts do not set aside and nullify all attempted

[1] Cooley's Const. Lim., 6th ed., 481, 483.

discrimination between constituents of a class, it is an invitation to, if not actual approval of, mere arbitrary selection.

True, the legislature may regulate the devolution of property, but when it so regulates it must treat the constituents of a class alike, and when it discriminates against constituents of a class it invades the constitutional right of the constituents thus discriminated against. "If the general assembly may grant to some citizens of a class substantial privileges," such as the right to inherit or take by testamentary devise without burden of any kind being imposed upon them, and may deprive other persons, under precisely the same conditions, of this right, except upon payment of a tax, "it is manifest that it may, upon like principle, deprive still other persons of other privileges which, under precisely the same circumstances, are enjoyed by all but the prohibited class." [1] To deny to one life tenant the right to acquire property—the right to succeed to property—except upon payment of a tax, and to extend to another life tenant at the same time, and to the same extent, and under substantially like circumstances, the right to acquire property —to succeed to property—is clearly a denial of the equal protection of the law. A person is deprived of liberty within the meaning of the Constitution when he is denied the right to acquire property in the manner which he has hitherto lawfully enjoyed, and which others are by the law still allowed to enjoy. To "succeed to property" is the equivalent of "to acquire property." To permit A to acquire property, free from the imposition of any tax, and to assess and tax B upon succeeding to the like property, at the same time, in the same manner and under substantially like circumstances, is a denial of the equal protection of the laws.

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[1] Per Mr. Justice Scholfield in Frorer v. The People, 141 Ill., 180.

That the plaintiffs in error are, by the Illinois act, denied the equal protection of the laws, is surely manifest. So well understood now are the controlling principles of law that the citation of authority is almost of doubtful propriety.

> "The denial of the equal protection of the laws may occur in various ways. It will most often occur in the enforcement of laws imposing taxes. An individual is denied the equal protection of the laws if his property is subjected by the State to higher taxation than is imposed upon like property of other individuals in the same community."[1]

The whole question of the power of the state to discriminate against persons, or classes of persons, has recently been most thoroughly and satisfactorily discussed and decided by this court in what is known as the Illinois Anti-Trust Case.[2]

In that case, Mr. Justice Harlan, speaking for this court, said:

> "The vital question, however, is whether the statute of Illinois of 1893 is not inconsistent with the Constitution of the United States, by reason of the fact that by the ninth section it declares that 'the provisions of this act shall not apply to agricultural products or live stock while in the hands of the producer or raiser.' The Circuit Court held this section to be repugnant to the Fourteenth Amendment of the Constitution of the United States, and to be so connected and interwoven with other sections that its invalidity affected the entire act, * * * We have said that the guarantee of the equal protection of the laws means 'that no person or class of persons shall be denied the same protection of the laws which is enjoyed by other persons or other classes in the same place and in like circumstances.'

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[1] Per Mr. Justice Harlan, in dissenting opinion, Philadelphia Fire Ass'n v. New York, 119 U. S., 110.

[2] Connolly v. Union Sewer Pipe Company, 184 U. S., 540.

Missouri v. *Lewis,* 101 U. S. 22, 31. We have also said: 'The Fourteenth Amendment, in declaring that no State 'shall deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws,' undoubtedly intended not only that there should be no arbitrary deprivation of life or liberty, or arbitrary spoliation of property, but that equal protection and security should be given to all under like circumstances in the enjoyment of their personal and civil rights; that all persons should be equally entitled to pursue their happiness and acquire and enjoy property; that they should have like access to the courts of the country for the protection of their persons and property, the prevention and redress of wrongs, and the enforcement of contracts; that no impediment should be interposed to the pursuits of any one except as applied to the same pursuits by others under like circumstances; that no greater burdens should be laid upon one that are laid upon others in the same calling and condition, and that in the administration of criminal justice no different or higher punishment should be imposed upon one than such as is prescribed to all for like offenses.' *Barbier* v. *Connolly,* 113 U. S. 27, 31. This language was cited with approval in *Yick Wo* v. *Hopkins,* 118 U. S. 356, 369, in which it was also said that 'the equal protection of the laws is a pledge of the protection of equal laws.' In *Hayes* v. *Missouri,* 120 U. S. 68, 71, we said that the Fourteenth Amendment required that all persons subject to legislation limited as to the objects to which it is directed, or by the territory within which it is to operate, 'shall be treated alike, under like circumstances and considerations, both in the privileges conferred, and in the limitations imposed.' 'Due process of law and the equal protection of the laws,' this court has said, 'are secured, if the laws operate on all alike, and do not subject the individual to an arbitrary exercise of the powers of government.' *Duncan* v. *Missouri,* 152 U. S. 377, 382. Many other cases in this court are to the like effect. * * *

The difficulty is not met by saying that, generally speaking, the State when enacting laws may, in its

discretion, make a classification of persons, firms, corporations and associations, in order to subserve public objects. For this court has held that classification 'must always rest upon some difference which bears a reasonable and just relation to the act in respect to which the classification is proposed, and can never be made arbitrarily and without any such basis. * * * But arbitrary selection can never be justified by calling it classification. The equal protection demanded by the Fourteenth Amendment forbids this. * * * No duty rests more imperatively upon the courts than the enforcement of those constitutional provisions intended to secure that equality of rights which is the foundation of free government. * * * It is apparent that the mere fact of classification is not sufficient to relieve a statute from the reach of the equality clause of the Fourteenth Amendment, and that in all cases it must appear not only that a classification has been made, but also that it is one based upon some reasonable ground—some difference which bears a just and proper relation to the attempted classification—and is not a mere arbitrary selection.' *Gulf, Colorado and Santa Fe Railway* v. *Ellis,* 165 U. S. 150, 155, 159, 160, 165."

The principles deducible from the preceding and quoted cases are not in conflict with the opinion of this court in *Magoun* v. *Illinois Trust and Savings Bank,* but, on the contrary, may be said to be affirmed in that case. Indeed, it is there said (170 U. S., 293):

"What satisfies this equality (under the fourteenth amendment) has not been and probably never can be precisely defined. Generally it has been said that it 'only requires the same means and methods to be applied impartially to all *the constituents of a class* so that the law shall operate equally and uniformly upon all persons in similar circumstances.' "

The fundamental requirement is that no person in a class shall be treated otherwise or differently than every other

person in the same class, under the like circumstances. This fundamental requirement will be violated if one life tenant where the remainder is to lineals may be taxed, whilst another life tenant where the remainder is to collaterals is absolutely free from all taxes. Life tenants, where the remainder is to lineals, are no different in any possible aspect that can be conceived of, from life tenants, where the remainder is to collaterals.

As was said by the Supreme Court of Missouri:

> "The legislature may legislate in regard to a class of persons, but they cannot take what might be termed a natural class of persons, split that class in two, and then arbitrarily designate the dissevered fractions of the original unit as two classes, and enact different rules for the government of each. This would be a mere arbitrary classification, without any basis of reason on which to rest, and would resemble a classification of men by the color of their hair, or their individual peculiarities, something not competent for the legislature to do." [1]

In the case at bar the unit is the life tenants. As already suggested, there is nothing in the statute which will warrant a classification of life tenants on the basis of the value of the property to which they severally succeed, and the question of the amount or value of the life estate succeeded to is wholly immaterial. Both life tenants exercise precisely the same privilege, at the same time, to the same extent, and in the same manner, and one is taxed for the privilege and the other is not taxed.

Any classification whereby it is sought to sustain the distinctions made by this act in respect to life tenants must concededly be based on some reasonable ground—some difference which bears a just and proper relation to the attempted classi-

[1] State v. Julow, 129 Mo., 163; 29 L. R. A., 257.

fication—and is not a mere arbitrary selection. Arbitrary selection can never be justified by calling it *classification.* As Hamilton said: "The genius of liberty reprobates every thing arbitrary or discretionary in taxation;"[1] and it is submitted that to attempt to differentiate between life tenants, as under this act, would be the exercise of uncontrolled discretion, wholly arbitrary, and resting upon no recognized principle of law or logic. Whether a life tenant within the degree of kinship filled by plaintiffs in error, under the act, succeeds to a greater or less sum or estate in value does not and cannot affect the nature of the privilege exercised, which is a privilege granted by the State of Illinois to all such life tenants to succeed to property, whether of great or small value. To whatever extent succeeded to, the privilege exercised is the same, and the tax upon the life tenant, where the remainder is to lineals, is upon, and exacted from, the *person* so exercising the privilege. The state makes no distinction in the privilege granted based on the value of the property succeeded to; and the privilege granted all life tenants is the same, regardless of the amount, or extent, or character of the property to which succession is had. When this privilege is granted to all such life tenants, however, the state is powerless to validly enact that one rule shall be applied to one life tenant and a wholly different and harshly discriminatory rule to another life tenant who succeeds to the same property in amount, at the same time, to the same extent and under like circumstances. To permit this to be done would be an invasion of the fundamental and essential rights of the citizen. While the power of the state to regulate the devolution of property is not

[1] The Continentalist; Hamilton's Works I, 240.

denied, this regulation must be within the limits marked by the Constitution. The constitution of the state limits the imposition of taxes upon the exercise of privileges so that they shall be uniform as to the class upon which the tax operates (article IX of the Illinois constitution); and this provision of the state constitution is a guaranty of equality, and is within the protection of the fourteenth amendment to the Federal Constitution, which secures, and is a pledge of, the protection of equal laws.

II.

Laws, arbitrary in their character, and bearing unjustly upon certain persons, have frequently been before this court, and the effort usually made is to sustain such legislation on some theory of classification; but the true rule is that each person subject to the laws has a right that he shall be governed by general public rules. Laws and regulations entirely arbitrary in their character, singling out particular persons, not distinct from others in the community by any reason applicable to such persons, are not of that character. Distinctions in rights and privileges must be based upon some distinction or reason not applicable to others, and it is only when such distinctions exist that differentiate, in important particulars, persons or classes of persons from the body of the people, that laws, having operation only on such particular person or persons, have been held to be valid enactments.

The power of the state to classify, as already stated, is not denied; but "the power of the state stops at injustice."[1] While the classification and the degree of taxation of the

[1] Southern Pacific Co. v. Board R. R. Comrs., 78 Fed., 236, 257.

selected subjects are within the legislative discretion, yet they are under the restraint of the supreme law of the land, which ordains that taxes shall be levied through equal laws, impartially administered. And the limits upon the power of classification by the states, as announced by this court, are that the classification must be based upon some reasonable ground—some difference which bears a just and proper relation to the attempted classification—and is not mere arbitrary selection. As said by Mr. Justice Matthews in *Kentucky R. R. Tax Cases,* 115 U. S. 321:

> "The rule of equality, in respect to the subject, only requires the same means and methods to be applied impartially to all *the constituents of each class, so that the law shall operate equally and uniformly upon all persons in similar circumstances.*"

The language of Judge Swayne (*in re Grice,* 79 Fed., 627, 645) may well be quoted:

> "This subject of equality before the law is a fundamental principle of English and American liberty, which not only has been held sacred in all the latter-day constitutions, state and federal, but the principle has been guarded by the courts with jealous watchfulness, to see that the citizen may have guaranteed to him this inestimable privilege and condition."

And, after reviewing numerous decisions of the Supreme Court of the United States, Judge Swayne continues (p. 646):

> "This statute under discussion is clearly class legislation, discriminating against some and favoring others. It is not that character of legislation which, in carrying out a public purpose, is limited in its application, and, within the sphere of its operation, affects alike all persons similarly situated. It may affect, and does affect, individuals of the same class in an opposite way. It favors some individuals of a certain class, and denounces other individuals of the same class. * * *

> All property in the state is entitled to equal protection, and no special property is entitled, or ought to receive, any special favors. Discrimination may be as potent against the citizen, in the direction of his property, as if aimed directly against himself personally."

And Judge Cooley says (*Taxation*, 215):

> "It is difficult to conceive of a reasonable exemption law which should select single individuals or corporations, or single articles of property, and taking them out of the class to which they belong, make them the subject of capricious legislative favor. Such favoritism could make no pretense to equality; it would lack the semblance of legitimate tax legislation."

In *State* v. *Loomis* (115 Mo., 304, 314; 22 S. W. Rep., 350) the Supreme Court of Missouri, speaking through Mr. Justice Black, said:

> "Classification for legislative purposes must have some reasonable basis upon which to stand. It must be evident that differences which would serve for a classification for some purposes furnish no reason whatever for a classification for legislative purposes. The differences which will support class legislation must be such as in the nature of things furnish a reasonable basis for separate laws and regulations."

The Supreme Court of Illinois, apparently not denying the general rule of law in respect to classification, as indicated by the preceding authorities, seeks to escape its effect by the following argument:

> "It is said that the statute discriminates between life tenants with remainder to lineal descendants and life tenants with remainder to collateral heirs, by imposing the tax on the first and excluding the second from its operation. But we cannot see that this is a mere arbitrary exaction from one class while another class, which cannot be differentiated from it, is allowed to go untaxed. A life estate with the fee descending in the lineal line might well be more desirable than a life estate with remainder to collateral heirs or

> strangers in the blood. At any rate, there is a sufficient difference upon which the legislature could, without transcending its power, base a classification." (record, 105, 106.)

Life tenants under the Illinois statute constitute but a single class, and whether the life tenancy succeeded to supports a remainder in the lineal line, or supports a remainder to the collateral heir, or to the stranger in blood, the life tenancy enjoyed, and the privilege exercised by the tenant in succeeding to it, are one and the same. The estate succeeded to, and the privilege exercised, in both cases, are identical. Again: the court apparently seeks to make a classification based upon some theory of monetary value, or of other *desirable* quality, but this argument cannot stand, because we have already demonstrated that it is possible, under this act, for a life tenant to succeed to an estate more desirable from every human standpoint without the imposition of any tax whatever, all that is necessary being that the remainder shall be limited to a collateral heir, or the stranger in blood. As has been suggested, the tax is not imposed upon the property, but upon the person who succeeds to the property. Indeed, the whole theory of inheritance taxes is sustained upon the principle that the tax is upon the person who succeeds; and it will probably be conceded that if the tax were put upon the property the Illinois law could never be sustained. (170 U. S., 302.)

Again, the Supreme Court of Illinois is clearly in error, when it says (p. 483 of opinion):

> "It may be observed that as to the rate of tax to be imposed and the amount of the exemption the beneficiaries are divided by the first section into three classes, which, for purposes of designation, may be called,—first, the lineals; second, the collaterals; and third, the strangers to the blood. It is not questioned

> in this case that these differences in relationship to the decedent have been properly used by the legislature as a just and legal basis for purposes of classification. * * * Now, to exempt, by the second section, beneficiaries of the first class who are given only a life estate with remainder over to beneficiaries of the second or third class, is to apply the same principle of discrimination in favor of those standing nearest in relationship to the deceased owner. No life tenant falling within the second or third class is exempt, and the mere fact that life tenants of the first class, where the remainder is kept in the lineal line, are not included in the exemption does not render the statute unconstitutional for lack of uniformity as to the class upon which it operates, as supposed by counsel." (record, 106.)

But how does this so-called lawful discrimination operate in the case of two beneficiaries, standing in precisely the same relation to the deceased owner, who severally succeed to life estates at the same time, to the same extent, and under the like circumstances; one being taxed where the remainder, by act of the deceased owner, is to go to the lineal descendants of the testator, and the other not taxed, where, by act of the same deceased owner, the remainder is to go to the collateral heir, or to the stranger in blood? In the instance given, is there not arbitrary and unreasonable discrimination against the tenant who succeeds to the life interest that supports a remainder to lineals?

If it shall be argued that legislatures have the power to classify for purposes of legislation, without infringing upon constitutional limitations, as held by this court in the *Magoun* case, the answer is: Yes, but such classification "must be so general as to bring within its limit all those who are in substantially the same situation or circumstances." [1]

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[1] Lippman v. People, 175 Ill., 101.

Here, the attempted classification, which embraces life tenants with remainder to lineals, is not "so general" as to include life tenants with remainder to collaterals, and they are both "in substantially the same situation and circumstances." The life estate of the one is precisely the same as that of the other; *i. e.,* the disposing of the remainder, whether to collateral or lineal, does not and cannot, in the slightest degree, affect the use or value of the life estate to the life tenant.

If it shall be argued, as intimated by the Supreme Court of Illinois in its decision of this case, that there is perhaps an element of value or desirability to the life tenant in having the remainder go to a lineal descendant of the testator, the answer is, it cannot by any possibility affect the value of the *res* to which the life tenant succeeds, viz., the estate for life, which is the same in either event of the provision for remainder,—and it is this estate for life only the succession to which is taxed. Even this supposed element of sentimental value disappears when the life estate goes to the widow of a son, with remainder to lineal descendants of the testator, under the provisions of the act.

Illinois statutes, involving the denial of the equal protection of the laws, and the taking of property without due process of law, and "the law of the land," have come before the Supreme Court of that state. Such a case was *Ritchie* v. *People,* 155 Ill., 98, commonly known as the "Factory or Workshop Act," prohibiting the employment of females in factories or workshops more than forty-eight hours in any one week of six days. The act was held to be unconstitutional, as being partial and discriminating in its character, and as being an arbitrary restraint upon the fundamental right of the citizen to control his or her own

time and faculties; and in disposing of the case, the court said:

> "The 'law of the land' is the opposite of 'arbitrary, unequal and partial legislation.' * * * The legislature has no right to deprive one class of persons of privileges allowed to other persons under the same conditions. The MAN, WHO IS FORBIDDEN TO ACQUIRE AND ENJOY PROPERTY IN THE SAME MANNER IN WHICH THE REST OF THE COMMUNITY IS PERMITTED TO ACQUIRE AND ENJOY IT, IS DEPRIVED OF LIBERTY IN PARTICULARS OF PRIMARY IMPORTANCE TO HIS PURSUIT OF HAPPINESS."

Another case was *Frorer* v. *People,* 141 Ill., 171, commonly known as the Truck Store Act, which was held to be unconstitutional. In that case Mr. Justice Scholfield, announcing the opinion of the court, said (p. 181):

> "Our constitution guarantees that no person shall be deprived of life, liberty or property without due process of law. * * * And, says Cooley: 'The man or the class forbidden the acquisition or enjoyment of property in the manner permitted the community at large, would be deprived of liberty in particulars of primary importance to his or their pursuit of happiness' (citing authorities). 'Due process of law' does not mean a statute passed for the purpose of working the wrong. Cooley's Const. Lim. (1st ed.), 253. These words are held to be synonymous with the words 'law of the land' (*Ibid.,* 352, 353). 'And this means general public law, binding upon all the members of the community under all circumstances, and not partial or private laws, affecting the rights of private individuals or classes of individuals.' *Millett* v. *People,* 117 Ill., 294, and authorities cited. It is not doubted that laws may be enacted, properly, and without infringing this section of the constitution, which, by reason of peculiar circumstances, may affect some persons or classes of persons only, who were not before affected by such restrictions; but in such instances the circumstances must be so exceptional as to leave no others affected in

precisely the same way upon whom a general law could have effect. As we quoted from Cooley's Constitutional Limitations in *Millett* v. *People, supra:* 'Distinctions in these respects should be based upon some reason which renders them important, like the want of capacity in infants and insane persons; but if the legislature should undertake to provide that persons following some specific lawful trade or employment should not have capacity to make contracts, or to receive conveyances, or to build such houses as others were allowed to erect, or in any other way to make such use of their property as was permissible to others, it can scarcely be doubted that the act would transcend the due bound of legislative power, even if it did not come in conflict with express constitutional provisions. The man or the class forbidden the *acquisition* or enjoyment of *property* in the manner permitted to the community at large, would be deprived of *liberty* in particulars of primary importance to his or their pursuit of happiness.' Cooley's Const. Lim. (1st ed.), 391."

Another case was that of *Lippman* v. *People,* 175 Ill., 101, in which was involved what was commonly known as the "Trade Mark Statute," in which the Supreme Court of Illinois said:

"While, perhaps, no precise and comprehensive definition of the word 'privilege,' as used in constitutions, has been attempted, the right to employ remedies for the collection of debts, the recovery of property and the *enforcement of rights* has always been included in the term as used in the Federal constitution. It seems that the peculiar benefits, advantages and rights conferred by this act upon the persons named in it, and the right to employ an unusual remedy for the recovery of their property, must be classed as privileges, and this does not seem to be denied in the argument. It is argued, however, that the law conferring these privileges is not a special but a general one, because it applies to all persons similarly situated. General laws have been defined to be those which relate to or bind all within the jurisdiction of the law-making power, while a

special law is limited to the object to which it applies. * * * If the law is general and uniform in its operation upon all persons in like circumstances, it is general in a constitutional sense, but it must operate equally and uniformly upon all brought within the relation and circumstances for which it provides. * * * Although general in its character, a law may, from the nature of the case, extend only to particular classes, such as minors, married women, laborers, bankers or common carriers. Such a law is not obnoxious to the provisions of the constitution if all persons of the class are treated alike under similar circumstances and conditions. * * * If an act should attempt to confer privileges only on persons of a certain stature, it could be said to apply uniformly to all people answering such description, and yet it would be absurd to say that such a law would be a general one. THE CLASSIFICATION MUST BE SO GENERAL AS TO BRING WITHIN ITS LIMITS ALL THOSE WHO ARE IN SUBSTANTIALLY THE SAME SITUATION OR CIRCUMSTANCES."

The constitutional guaranties afforded by both the state and federal governments, the son and the grandson of Albert M. Billings now invoke. The pledge of the protection of equal laws will be violated if they are taxed under this act of the general assembly of Illinois. To tax them, life tenants, with remainder to lineals, and to absolve life tenants where the remainder is to collaterals, is mere selection, that cannot be justified, and that does violence to both the letter and the spirit of the guaranties contained in both the state and the national constitutions.

The act in question is essentially a tax law upon persons for exercising a privilege, and if one person is to be taxed for exercising a privilege, and his brother under the same circumstances and conditions is not taxed upon exercising the same privilege, it is manifest the act not only offends against the fundamental principles of taxation, but the fundamental rights of the citizen. And if it does so, it is the

duty of the court to protect and defend the citizen by declaring the act unconstitutional.

> "In the exercise of the power to tax, the purpose always is that a common burden shall be sustained by common contributions, regulated by some fixed general rule, and apportioned by the law according to some uniform ratio of equality. The power is not, therefore, arbitrary, but rests on fixed principles of justice which have for their object the protection of the taxpayer against exceptional and invidious exactions, and is to have effect through established rules, operating impartially."[1]

While it is true the case of *Magoun* v. *Illinois Trust and Savings Bank* raised the question of the constitutionality of the Illinois Inheritance Tax Act, and this court held that the classification for the purposes of taxation made by the Illinois legislature (and which was the question presented to this court) did not conflict with the provisions of the Federal Constitution, nevertheless, the question involved in the case at bar was not presented to and was not passed upon by this court. It related solely to the graduated feature of the tax. The gravamen of the decision in the Magoun case may be said to be this: that "if the constituents of each class are affected alike, the rule of equality prescribed by the cases is satisfied. In other words, 'the law operates equally and uniformly upon all persons in similar circumstances'" (p. 286 of opinion). And the court held the classification presented by the Magoun case was not obnoxious to the fourteenth amendment.

The question presented by the record in the case at bar is whether or not the Illinois legislature can discriminate against *constituents of a certain class,* and apply different rules for the taxation of its members.

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[1] Cooley, Taxation, 2.

Life tenants constitute but a single class, and the incidents of such an estate, the source thereof, the extent, the dominion over and quality of interest in the tenant, are the same irrespective of the ultimate vesting of the remainder. The tax is not upon the property, but is upon the person succeeding to the property.

Conclusion.

The Illinois act to tax gifts, legacies and inheritances should be declared unconstitutional, in so far as it purports to tax life tenants whose estates support a remainder to the lineal descendants of the testator, and to absolve from taxation life tenants whose estates support a remainder to collaterals or to the stranger in blood, because such an act is a denial of the equal protection of the laws to the life tenant discriminated against, and as such it is obnoxious to the fourteenth article of amendment to the Constitution of the United States.

James F. Meagher,
William D. Guthrie,
Of Counsel for Plaintiffs in Error.

APPENDIX.

Provisions of Illinois Constitution.

"No person shall be deprived of life, liberty or property, without due process of law."

Const. of Illinois, Art. II, Sec. 2.

"The General Assembly shall provide such revenue as may be needful by levying a tax, by valuation, so that every person and corporation shall pay a tax in proportion to the value of his, her or its property—such value to be ascertained by some person or persons to be elected or appointed in such manner as the General Assembly shall direct, and not otherwise; but the General Assembly shall have power to tax peddlers, auctioneers, brokers, hawkers, merchants, commission merchants, showmen, jugglers, inn keepers, grocery keepers, liquor dealers, toll bridges, ferries, insurance, telegraph and express interests or business, vendors of patents, and persons or corporations owning or using franchises and privileges, in such manner as it shall from time to time direct by general law, uniform as to the class upon which it operates."

Const. of Illinois, Art IX, Sec. 1.

Illinois Inheritance Tax Act.

"An Act to tax gifts, legacies and inheritances in certain cases and to provide for the collection of the same.

Approved June 15, 1895. In force July 1, 1895.

§ 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly:* All property, real, personal and mixed which shall pass by will or by the intestate laws of this State from any person who may die seized or possessed of the same while a resident of this state or, if decedent was not a resident of this State at the time of his death, which property or any part thereof shall be within this State or any interest therein or income therefrom, which shall be transferred by deed, grant, sale or gift made in contemplation of the death of the grantor or bargainor or intended to take effect, in possession or enjoyment after such death, to any person or persons or to any body politic or corporate in trust or otherwise, or by reason whereof any person or body politic or corporation shall become beneficially entitled in possession or expectation to any property or income thereof, shall be, and is, subject to a tax at the rate hereinafter specified to be paid to the treasurer of the proper county for the use of the State, and all heirs, legatees and devisees, administrators, executors and trustees shall be liable for any and all such taxes until the same shall have been paid as hereinafter directed. When the beneficial interests to any property or income therefrom shall pass to or for the use of any father, mother, husband, wife, child, brother, sister, wife or widow of the son or the husband of the daughter, or any child or children adopted as such in conformity with the laws of the State of Illinois, or to any person to whom the deceased, for not less than ten years prior to death, stood in the acknowledged relation of a parent, or to any lineal descendant born in lawful wedlock, in every such case the rate of tax shall be one dollar on every hundred dollars of the clear market value of such property received by each person and at and after the same rate for every less amount, pro-

vided that any estate which may be valued at a less sum than twenty thousand dollars shall not be subject to any such duty or taxes, and the tax is to be levied in above cases only upon the excess of twenty thousand dollars received by each person. When the beneficial interests to any property or income therefrom shall pass to or for the use of any uncle, aunt, niece, nephew or any lineal descendant of the same, in every such case the rate of such tax shall be two dollars on every one hundred dollars of the clear market value of such property received by each person on the excess of two thousand dollars so received by each person. In all other cases the rate shall be as follows: On each and every hundred dollars of the clear market value of all property and at the same rate for any less amount; on all estates of ten thousand dollars and less, three dollars; on all estates of over ten thousand dollars and not exceeding twenty thousand dollars, four dollars; on all estates over twenty thousand dollars and not exceeding fifty thousand dollars, five dollars, and on all estates over fifty thousand dollars, six dollars: *Provided,* that an estate in the above case which may be valued at a less sum than five hundred dollars shall not be subject to any duty or tax.

§ 2. When any person shall bequeath or devise any property or interest therein or income therefrom to mother, father, husband, wife, brother and sister, the widow of the son, or a lineal descendant during the life or for a term of years or (and) remainder to the collateral heir of the decedent, or to the stranger in blood or to the body politic or corporate at their decease, or on the expiration of such term, the said life estate or estates for a term of years shall not be subject to any tax and the property so passing shall be appraised immediately after the death at what was the fair market value thereof at the time of the death of the decedent in the manner hereinafter provided, and after deducting therefrom the value of said life estate, or term of years, the tax transcribed by this Act on the remainder shall be immediately due and payable to the treasurer of the proper county, and, together with the interests thereon, shall be and remain a lien on said property until the same

is paid: *Provided,* that the person or persons or body politic or corporate beneficially interested in the property chargeable with said tax elect not to pay the same until they shall come into the actual possession or enjoyment of such property, or, in that case said person or persons or body politic or corporate shall give a bond to the People of the State of Illinois in the penalty three times the amount of the tax arising upon such estate with such sureties as the county judge may approve, conditioned for the payment of the said tax, and interest thereon, at such time or period as they or their representatives may come into the actual possession or enjoyment of said property, which bond shall be filed in the office of the county clerk of the proper county: *Provided, further,* that such person shall make a full, verified return of said property to said county judge, and file the same in his office within one year from the death of the decedent, and within that period enter into such securities and renew the same for five years.

§ 3. All taxes imposed by this Act, unless otherwise herein provided for, shall be due and payable at the death of the decedent, and interest at the rate of six per cent. per annum shall be charged and collected thereon for such time as said taxes is not paid: *Provided,* that if said tax is paid within six months from the accruing thereof, interest shall not be charged or collected thereon, but a discount of five per cent. shall be allowed and deducted from said tax, and in all cases where the executors, administrators or trustees do not pay such tax within one year from the death of the decedent, they shall be required to give a bond in the from and to the effect prescribed in section two of this Act for the payment of said tax, together with interest.

§ 4. Any administrator, executor or trustee having any charge or trust in legacies or property for distribution subject to the said tax shall deduct the tax therefrom, or if the legacy or property be not money he shall collect a tax thereon upon the appraised value thereof from the legatee or person entitled to such property, and he shall not deliver or be compelled to deliver any specific legacy or property subject to tax to any person until he shall have collected the tax thereon, and

whenever any such legacy shall be charged upon or payable out of the real estate, the heir or devisee, before paying the same, shall deduct said tax therefrom and pay the same to the executor, administrator or trustee, and the same shall remain a charge on such real estate until paid, and the payment thereof shall be enforced by the executor, administrator or trustee in the same manner that the payment of said legacies might be enforced, if, however, such legacy be given in money to any person for a limited period, he shall retain the tax upon the whole amount, but if it be not in money, he shall make application to the court having jurisdiction of his accounts to make an apportionment, if the case requires it, of the sum to be paid into his hands by such legatees, and for such further order relative thereof as the case may require.

§ 5. All executors, administrators and trustees shall have full power to sell so much of the property of the decedent as will enable them to pay said tax, in the same manner as they may be enabled to do by law, for the payment of duties of their testators and intestates, and the amount of said tax shall be paid as hereinafter directed.

§ 6. Every sum of money retained by any executor, administrator or trustee, or paid into his hands for any tax on any property, shall be paid by him within thirty days thereafter to the treasurer of the proper county, and the said treasurer or treasurers shall give, and every executor, administrator or trustee shall take, duplicate receipts from him of said payments, one of which receipts he shall immediately send to the State Treasurer, whose duty it shall be to charge the treasurer so receiving the tax with the amount thereof, and shall seal said receipt with the seal of his office and countersign the same and return it to the executor, administrator or trustee, whereupon it shall be a proper voucher in the settlements of his accounts, but the executor, administrator or trustee shall not be entitled to credit in his accounts or be discharged from liability for such tax unless he shall purchase a receipt so sealed and countersigned by the treasurer and a copy thereof certified by him.

§ 7. Whenever any of the real estate of which any decedent may die seized shall pass to any body politic or corporate, or to any person or persons, or in trust for them, or some of them, it shall be the duty of the executor, administrator or trustee of such decedent to give information thereof in writing to the treasurer of the county where said real estate is situated, within six months after they undertake the execution of their expected duties, or if the fact be not known to them within that period, then within one month after the same shall have come to their knowledge.

§ 8. Whenever debts shall be proved against the estate of the decedent after distribution of legacies from which the inheritant tax has been deducted in compliance with this Act, and the legatee is required to refund any portion of the legacy, a proportion of the said tax shall be repaid to him by the executor or administrator, if the said tax has not been paid into the State or county treasury, or by the county treasurer if it has been so paid.

§ 9. Whenever any foreign executor or administrator shall assign or transfer any stocks or loans in this State standing in the name of decedent, or in trust for a decedent, which shall be liable to the said tax, said tax shall be paid to the treasury or treasurer of the proper county on the transfer thereof; otherwise the corporation forming such transfer shall become liable to pay such taxes, provided that such corporation has knowledge before such transfer that said stocks or loans are liable to such taxes.

§ 10. When any amount of said tax shall have been paid erroneously to the State treasury, it shall be lawful for him, on satisfactory proof rendered to him by said county treasurer of said erroneous payments, to refund and pay to the executor, administrator or trustee, person or persons, who have paid any such tax in error, the amount of such tax so paid: *Provided,* that all applications for the repayment of said tax shall be made within two years from the date of said payment.

§ 11. In order to fix the value of property of persons whose estate shall be subject to the payment of said tax, the county judge, on the application of any

interested party, or upon his own motion, shall appoint some competent person as appraiser as often as, or whenever, occasion may require, whose duty it shall be forthwith to give such notice by mail to all persons known to have or claim an interest in such property, and to such persons as the county judge may by order direct, of the time and place he will appraise such property, and at such time and place to appraise the same at a fair market value, and for that purpose the appraiser is authorized by leave of the county judge to use subpœnas for and to compel the attendance of witnesses before him, and to take the evidence of such witnesses under oath concerning such property and the value thereof, and he shall make a report thereof and of such value in writing to said county judge, with the depositions of the witnesses examined and such other facts in relation thereto, and to said matter as said county judge may by order require to be filed in the office of the clerk of said county court, and from this report the said county judge shall forthwith use and fix the then cash value of all estates, annuities and life estates or terms of years growing out of said estate, and the tax to which the same is liable, and shall immediately give notice by mail to all parties known to be interested therein. Any person or persons dissatisfied with the appraisement or assessment may appeal therefrom to the county court of the proper county within sixty days after the making and filing of such appraisement or assessment, on paying *the given security proof* (or giving proper security) to the county judge to pay all costs, together with whatever taxes that shall be fixed by said court. The appraisers shall be paid by the county treasurer out of any funds he may have in his hands on account of said tax, on the certificate of the county judge, at the rate of three dollars per day for every day actually and necessarily employed in said appraisement, together with his actual and necessary traveling expenses.

§ 12. Any appraiser appointed by this Act who shall take any fee or reward from any executor, administrator, trustee, legatee, next of kin or heir of any decedent, or from any other person liable to pay said

tax or any portion thereof, shall be guilty of a misdemeanor, and upon conviction in any court having jurisdiction of misdemeanors, he shall be fined not less than two hundred and fifty dollars nor more than five hundred dollars and imprisoned not exceeding ninety days, and in addition thereto the county judge shall dismiss him from such service.

§ 13. The county court in the county in which the real property is situated, of the decedent who was not a resident of the State, or in the county in which the deceased was a resident at the time of his death, shall have jurisdiction to hear and determine all questions in relation to the tax arising under the provisions of this Act, and the county court first acquiring jurisdiction hereunder shall retain the same to the exclusion of every other.

§ 14. If it shall appear to the county court that any tax accruing under this Act has not been paid according to law, it shall issue a summons summoning the persons interested in the property liable to the tax to appear before the court on a day certain not more than three months after the date of such summons, to show cause why said tax should not be paid. The process, practice and pleadings and the hearing and determination thereof, and the judgment in said court in such cases shall be the same as those now provided or which may hereafter be provided in probate cases in the county courts in this State and the fees and costs in such cases shall be the same as in the probate cases in the county courts of this State.

§ 15. Whenever the treasurer of any county shall have reason to believe that any tax is due and unpaid under this Act, after refusal or neglect of the person interested in the property liable to pay said tax, to pay the same, he shall notify the State's attorney of the proper county, in writing, of such refusal to pay said tax, and the State's attorney so notified, if he has proper cause to believe a tax is due and unpaid, shall prosecute the proceeding in the county court in the proper county, as provided in section 14 of this Act, for the enforcement and collection of such tax, and in such

case said court shall allow as costs in the said case such fees to said attorney as he may deem reasonable.

§ 16. The county judge and county clerk of each county shall, every three months, make a statement in writing to the county treasurer of the county of the property from which, or the party from whom, he has reason to believe a tax under this Act is due and unpaid.

§ 17. Whenever the county judge of any county shall certify that there was probable cause for issuing a summons, and taking the proceedings specified in section 14 of this Act, the State Treasurer shall pay or allow to the treasury of any county all expenses incurred for service of summons and his other lawful disbursements that has not otherwise been paid.

§ 18. The Treasurer of the State shall furnish to each county judge a book in which he shall enter the returns made by appraisers, the cash value of annuities, life estates and terms of years and other property fixed by him, and the tax assessed thereon and the amounts of any receipts for payment thereof filed with him, which books shall be kept in the office of the county judge as a public record.

§ 19. The treasurer of each county shall collect and pay the State Treasurer all taxes that may be due and payable under this Act, who shall give him a receipt therefor, of which collection and payment he shall make a report under oath to the Auditor of Public Accounts on the first Monday in March and September of each year, stating for what estate paid, and in such form and containing such particulars as the Auditor may prescribe, and for all said taxes collected by him and not paid to the State Treasurer by the first day of October and April of each year, he shall pay interest at the rate of ten per cent. per annum.

§ 20. The treasurer of each county shall be allowed to retain two per cent. on all taxes paid and accounted for by him under this Act, in full for his services in collecting and paying the same, in addition to his salary or fees allowed by law.

§ 21. Any person or body politic or corporate shall upon the payment of the sum of fifty cents, be en-

titled to a receipt from the county treasurer of any county or the copy of the receipt, at his option, that may have been given by said treasurer for the payment of any tax under this act, to be sealed with the seal of his office, which receipt shall designate on what real property, if any, of which any deceased may have died seized, said tax has been paid and by whom paid, and whether or not it is in full of said tax and said receipt may be recorded in the clerk's office of said county in which the property may be situated, in the book to be kept by said clerk for such purpose.

§ 22. The lien of the collateral inheritance tax shall continue until the said tax is settled and satisfied: *Provided,* that said lien shall be limited to the property chargeable therewith: *And, provided, further,* that all inheritance taxes shall be sued for within five years after they are due and legally demandable, otherwise they shall be presumed to be paid and cease to be a lien as against any purchasers of real estate.

§ 23. All laws or parts of laws inconsistent herewith be, and the same are hereby, repealed."

Laws of Illinois, 1895, p. 301.

Supreme Court U. S.
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Clerk.

No. 106.

Reply Brf. of Guthrie & Meagher for P. E.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1902.

Filed Dec. 3, 1902.

CORNELIUS K. G. BILLINGS and ALBERT M. BILLINGS RUDDOCK,
Plaintiffs in error,
vs.
THE PEOPLE OF THE STATE OF ILLINOIS.

No. 106.

Error to the Supreme Court of Illinois.

REPLY BRIEF ON BEHALF OF PLAINTIFFS IN ERROR.

WILLIAM D. GUTHRIE,
JAMES F. MEAGHER,
For plaintiffs in error.

WASHINGTON, December 3, 1902.

[18,178]

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1902.

CORNELIUS K. G. BILLINGS and ALBERT M. BILLINGS RUDDOCK,
Plaintiffs in error,

vs.

THE PEOPLE OF THE STATE OF ILLINOIS.

In error to the Supreme Court of Illinois.

No. 106.

REPLY BRIEF ON BEHALF OF PLAINTIFFS IN ERROR.

Three points in the brief filed on behalf of the defendant in error will be discussed in the following order, viz.: (1) as to the question involved and the point decided in the case of *Magoun* v. *Illinois Trust & Savings Bank*, 170 U. S. 283; (2) as to the enforcement of the law, notwithstanding the unconstitutionality of the exemption of certain life estates, and (3) as to the true meaning and necessary effect of the statute.

I.

Although it is true that in the *Magoun* case, *supra* (170 U. S. 283), it was argued that the exemptions in the inheritance tax law of Illinois, including the exemption of life estates, rendered the act unequal and violated the provisions of the Fourteenth Amendment, the class of tenants for life or for years was not before the court and the

question of an estate for life or for years under section 2 of the act was not involved. The only point presented was as to the effect of the exemption of property under section 1 to the amount of $20,000 as applicable to the class of lineal descendants to which Mrs. Magoun belonged. By way of argument, reference was made to other exemptions, including that of certain life estates under section 2 of the act; but it was not suggested that Mrs. Magoun held a life estate or could complain of the exemption of life estates in whole or in part. The only exemptions mentioned in the opinion of Mr. Justice McKenna are those contained in section 1 (170 U. S. 298–299).

It is submitted that the *Magoun* case did not decide that tenants for life or for years could be discriminated against in the manner provided in section 2 of the act, now before the court. The point could not have been considered, for the plain reason that Mrs. Magoun was not a tenant for life or for years, and could not have been heard to complain of discrimination in a class to which she did not belong. The whole class of life tenants or tenants for years could have been exempted, and such a classification would be within the discretion of the legislature. The constitutionality of the exemption under section 2 is now directly challenged by the plaintiffs in error because they belong to the class affected, and they contend that in their class they are discriminated against in that the tax is not similarly imposed upon

others within the same class receiving substantially the same kind of property or exercising the same privilege.

II.

The Supreme Court of Illinois, in overruling the contention of the plaintiffs in error as to the unconstitutionality of the exemption in question, among other things said (record, p. 206):

> "Even if it were one which the legislature had no power to make, that provision only would be void, leaving the rest of the act in full force; and such a construction would not affect the order of the court appealed from nor aid appellants in their contention."

And the brief in this court submitted by the defendant in error urges this view as a reason why the judgment appealed from should not be disturbed (Brief for defendant in error, pp. 36–37).

It must, of course, be clear that no such suggestion can deprive this court of its jurisdiction. If the provision exempting part of the class of life tenants be unconstitutional, the law cannot be executed so as to tax those life tenants whom the legislature has expressly declared should be exempted from taxation. To do so would give the statute an operation beyond the clear intent of the legislature, "and beyond what any one can say it would have enacted in view of the illegality of the exceptions."

In the case of *Spraigue* v. *Thompson*, 118 U. S. 90, 94, the state court had declared an exemption to be invalid and had then decided that the

statute could be enforced and its provisions made to apply to the exempted class. This court, however, held that such a view could not be accepted, and that if the exemption were invalid, the whole statute had to fall. See, also, *Pollock* v. *Farmers' Loan & Trust Co.*, 158 U. S. 601, 636; *Connolly* v. *Union Sewer Pipe Co.*, 184 U. S. 540; *Estate of Mahoney*, 133 Cal. 180, 181.

In the case at bar, the court below has not invalidated the alleged unconstitutional exemption, but the statute is now being enforced under its decision against the plaintiffs in its entirety and upon the assumption that the objectionable clause is in full force and effect so as to exempt part of the class of tenants for life or for years. Hence, the question now presented is whether, as so interpreted and enforced, the statute violates the requirement of the equal protection of the laws. It would, indeed, be an extraordinary doctrine that a taxpayer could not complain of an unequal tax law because, if the inequality were removed, he would nevertheless be subject to taxation. Such a doctrine would preclude any relief whatever from an unequal tax law, and it would permit the taxing of A and the exemption of B under exactly similar conditions.

III.

Upon the merits of the case, most of the forcible argument on behalf of the defendant in error cannot be disputed. For example, if the classification is based upon a substantial difference which

"clearly distinguishes one class from the other" and if the law operates "alike upon all in each class," there is no occasion for further discussion. No one will challenge the power of the state to create classes or to tax lineals and exempt collaterals, or *vice versa*, or to wholly exempt estates for life or for years. The only question presented is whether or not the Illinois statute bears unequally upon certain members of the same class of tenants for life or for years.

In several parts of the defendant's brief, it is stated that there are two classes of tenants for life or for years consisting, in the one case, of what "may be designated as life estates with remainder to the lineal descendants of the *beneficiary*," and in the other case of what "may be designated as life estates with remainder to the collateral heirs of the decedent or to the stranger in blood" (pp. 6, 11, 33). Such, however, are not the provisions of the Illinois statute. On the contrary, the class in one case is not of estates with remainder to the lineal descendants of the *beneficiary*, but of estates with remainder to the lineal descendants of the *decedent*, who may be entire strangers to the beneficiary.

If the Illinois statute had divided tenants for life or for years into two classes, such as is suggested by the learned Attorney-General, and had taxed those life estates where the remainder went to the lineal descendants of the life tenant and had exempted those life estates where the remainder went to strangers in blood to the life tenant,

an entirely different question might be presented. But the clear language of the statute forbids any such interpretation. Under its provisions, the estate may be to A, a collateral, with remainder back to a lineal descendant of the decedent, and A is taxed, although such remainder may be to an entire stranger, whilst if the remainder be to his own child, he would be exempted from taxation, because the remainder was "to the collateral heir of the decedent or to the stranger in blood." The tax is, therefore, made to depend upon nothing in which the life tenant necessarily has the slightest personal concern or interest or from which it could reasonably be said that his life estate was made more beneficial or desirable. For the sake of the argument, it might well be conceded that a division of life tenants into two classes, taxing those where the remainder went to their own children and exempting those where the remainder went to strangers, would be upheld as a reasonable and rational division into classes. But it is purely fanciful and arbitrary to divide life estates, as in the statute now before the court, where there is not the slightest necessary connection between the life tenant and the remainderman.

A reference to the true nature of this form of taxation may not be superfluous. Whatever we call it, the power must be exercised in subordination to the guaranty of equal laws. Notwithstanding the plain language of the Illinois statute, it may be conceded that the present tax is not one in its essence on property, but on the succession.

Stated in different language, the tax is on the act of transmitting or receiving property in a certain manner or from certain sources or by certain classes. The validity of such a tax does not rest at all upon the authority to regulate inheritances or to confer or limit the privilege or right to inherit or succeed to a decedent's property; for if it did, the federal statute could not be maintained. The only true and sound view is that the devolution of property upon death involves a transaction which is a fit and proper subject of taxation wholly irrespective of the power to regulate such devolution. *Knowlton* v. *Moore*, 178 U. S. 41,57.

Even if the power to levy an inheritance tax depended upon the right to regulate inheritance to the fullest extent that may be argued on behalf of the defendant in error, nevertheless the constitutional guaranty of equal laws would be applicable. As Mr. Justice McKenna said in construing this statute in *Magoun* v. *Illinois Trust & Savings Bank*, 170 U. S. 283, 292 :

> "The power of the states over successions may be as plenary in the abstract as appellee contends for, nevertheless it must be exerted within the limitations of that constitution. If the power of devise or of inheritance be a privilege, it must be conferred or regulated by equal laws."

Whilst the Fourteenth Amendment concededly does not prohibit, in tax laws, reasonable classification based upon substantial differences, it is firmly established that the taxing power must be exercised impartially and by equal laws, and that taxes

must be imposed without discrimination upon all persons fairly within the same class and exercising like rights or privileges. In other words, as Mr. Justice Matthews said in the *Kentucky Railroad Tax Cases*, 115 U. S. 321, 337:

> "The rule of equality, in respect to the subject, only requires the same means and methods to be applied impartially to all the constituents of each class, so that the law shall operate equally and uniformly upon all persons in similar circumstances."

Or, as Mr. Justice Field said in *Hayes* v. *Missouri*, 120 U. S. 68, 71:

> "The Fourteenth Amendment to the Constitution of the United States does not prohibit legislation which is limited either in the objects to which it is directed, or by the territory within which it is to operate. It merely requires that all persons subjected to such legislation shall be treated alike under like circumstances and conditions, both in the privileges conferred and in the liabilities imposed."

In *Giozza* v. *Tiernan*, 148 U. S. 657, 662, Mr. Chief Justice Fuller said:

> "It is enough that there is no discrimination in favor of one as against another of the same class."

In the two recent cases of *Cotting* v. *Kansas City Stock Yards Co., &c.*, 183 U. S. 79, 111, and *Connolly* v. *Union Sewer Pipe Co.*, 184 U. S. 540, 560, this court has reviewed the cases on classification and again applied the rule above stated requiring equality among those of the same class. In the former, Mr. Justice Brewer, speaking upon this point for the unanimous court, said:

> "So again exercising the undoubted right of classification it may often happen that some classes are subject to regulations, and some individuals are burdened with obligations which do not rest upon other classes or other individuals not similarly situated. . . . But while recognizing to the full extent the impossibility of an imposition of duties and obligations mathematically equal upon all, and also recognizing the right of classification of industries and occupations, we must nevertheless always remember that the equal protection of the laws is guaranteed, and that such equal protection is denied when upon one of two parties engaged in the same kind of business and under the same conditions burdens are cast which are not cast upon the other."

It is undoubtedly customary in inheritance or succession tax laws to classify heirs, legatees and distributees so as to create classes among relatives according to their degree of kinship to the decedent, and between relatives and strangers. Such classes are obviously definable with regard to relative differences and reasonable distinctions, and they are, therefore, not arbitrary. When, however, a class has been thus created, each member of that class is entitled to "be treated alike under like circumstances and conditions, both in the privileges conferred and in the liabilities imposed." Under the Illinois statute, a class of tenants for life or for years, comprising both collateral relatives and lineal descendants, are subdivided so that some are taxed and others are not taxed. In both cases, the estate—whether for life or for years—is exactly the

same in so far as concerns "the legatee or person entitled to such property" and who pays the tax. The life estate may be to a collateral with remainder to a lineal descendant not related to such life tenant, yet the latter is taxed, although not taxed if the remainder happens to be to a collateral of the decedent, even if it be the life tenant's own child.

It may thus come to pass that of two persons occupying the same relation to the decedent and taking in the same character two pieces of property of equal value for the same term, one would pay a tax and the other be exempted simply because the remainder went to a collateral or lineal of the decedent, in whom the life tenant had no interest. It is submitted that such a law necessarily produces unreasonable inequality within the class of persons holding or enjoying property for life or for years.

By declaring invalid the present tax upon estates for life or for years because of the inequality resulting from the exemption under section 2 of the act, the taxing power of the state will not be embarrassed in the slightest degree. The act can be remodeled either by omitting the exemption altogether or by adopting the theory now urged by the learned counsel for the defendant in error, namely, a tax upon an estate for life or for years where the remainder is to the lineal descendant of the beneficiary and exemption where the remainder is to strangers of the beneficiary. Such a classification might, perhaps, be sustained; but it

is obvious that it would differ radically from that contained in the present statute, which, in the feature now challenged, is unique of its kind, and finds no analogy or support in the legislation of any other state or country.

Washington, December 3, 1902.

WILLIAM D. GUTHRIE,
JAMES F. MEAGHER,
for plaintiffs in error.

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No. 106.

(Brf. of Hamlin for Def'g in Error.)

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IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1902.

CORNELIUS K. G. BILLINGS and ALBERT M. BILLINGS RUDDOCK,
Plaintiffs in Error.

vs.

THE PEOPLE OF THE STATE OF ILLINOIS,
Defendant in Error.

106.

Error to the Supreme Court of Illinois.

BRIEF AND ARGUMENT FOR DEFENDANT IN ERROR.

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SPRINGFIELD ILL.:
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IN THE

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OCTOBER TERM, A. D. 1902.

CORNELIUS K. G. BILLINGS and ALBERT M. BILLINGS RUDDOCK, *Plaintiffs in Error.* *vs.* THE PEOPLE OF THE STATE OF ILLINOIS, *Defendant in Error.*	*Error to the Supreme Court of Illinois.*

BRIEF AND ARGUMENT FOR DEFENDANT IN ERROR.

THE ISSUE PRESENTED.

The constitutionality of the inheritance tax law of Illinois, as tested by the Fourteenth Amendment to the Constitution of the United States, is challenged and again brought to this Court for review upon the ground that, by its

provisions, a tax is imposed upon the privilege of succession to a life estate or an estate for a term of years, with the remainder to the lineal heirs of decedent, while by its expressed exception the privilege of succession to a life estate or an estate for a term of years, with remainder to the collateral heirs of decedent or to a stranger in blood, is not subject to a tax, but exempted therefrom; and the case is argued upon the theory that the privileges, which in one case is taxed and the other exempted, are of the same class and identical, and that the law is not uniform, but discriminating in its operation.

That part of the Act in question involved by the issue presented is found in Sections 1 and 2, and is as follows:

> "SEC. 1. All property, real, personal and mixed which shall pass by will or by the intestate laws of this State from any person who may die seized or possessed of the same while a resident of this State or, if decedent was not a resident of this State at the time of his death, which property or any part thereof shall be within this State or any interest therein or income therefrom, which shall be transferred by deed, grant, sale or gift made in contem.

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plation of the death of the grantor or bargainor or intended to take effect, in possession or enjoyment after such death, to any person or persons or to any body politic or corporate in trust or otherwise, or by reason whereof any person or body politic or corporate shall become beneficially entitled in possession or expectation to any property or income thereof, shall be, and is, subject to a tax at the rate hereinafter specified to be paid to the treasurer of the proper county for the use of the State; and and all heirs, legatees and devisees, administrators, executors and trustees shall be liable for any and all such taxes until the same shall have been paid as hereinafter directed. When the beneficial interests to any property or income therefrom shall pass to or for the use of any father, mother, husband, wife, child, brother, sister, wife or widow of the son or the husband of the daughter, or any child or children adopted as such in conformity with the laws of the State of Illinois, or to any person to whom the deceased, for not less than ten years prior to death, stood in the acknowledged relation of a parent, or to any lineal descendant born in lawful wedlock, in every such case the rate of tax shall be one dollar on every hundred dollars of the clear market value of such property received by each person and at and after the same rate for every less amount: *Provided*, that any

estate which may be valued at a less sum than twenty thousand dollars shall not be subject to any such duty or taxes, and the tax is to be levied in the above cases only upon the excess of twenty thousand dollars received by each person. When the beneficial interests to any property or income therefrom shall pass to or for the use of any uncle, aunt, neice, nephew or any lineal descendant of the same, in every such case the rate of such tax shall be two dollars on every one hundred dollars of the clear market value of such property received by each person on the excess of two thousand dollars so received by each person. In all other cases the rate shall be as follows: On each and every hundred dollars of the clear market value of all property and at the same rate for any less amount; on all estates of ten thousand dollars and less, three dollars; on all estates of over ten thousand dollars and not exceeding twenty thousand dollars, four dollars; on all estates over twenty thousand dollars and not exceeding fifty thousand dollars, five dollars, and on all estates over fifty thousand dollars, six dollars: *Provided*, that an estate in the above case which may be valued at a less sum than five hundred dollars shall not be subject to any duty or tax.

"SEC. 2. When any person shall bequeath or devise any property or interest therein or income therefrom to mother, father,

husband, wife, brother and sister, the widow of the son, or a lineal descendant during the life or for a term of years or (and) remainder to the collateral heir of the decedent, or to the stranger in blood or to the body politic or corporate at their decease, or on the expiration of such term, the said life estate or estates for a term of years shall not be subject to any tax and the property so passing shall be appraised immediately after the death at what was the fair market value thereof at the time of the death of the decedent in the manner hereinafter provided, and after deducting therefrom the value of said life estate, or term of years, the tax transcribed by this act on the remainder shall be immediately due and payable to the treasurer of the proper county, and, together with the interests thereon, shall be and remain a lien on said property until the same is paid: *Provided*, that the person or persons or body politic or corporate beneficially interested in the property chargeable with said tax elect not to pay the same until they shall come into the actual possession or enjoyment of such property, or, in that case said person or persons or body politic or corporate shall give a bond to the people of the State of Illinois in the penalty three times the amount of the tax arising upon such estate with such sureties as the county judge may approve, conditioned for the

payment of the said tax, and interest thereon, at such time or period as they or their representatives may come into the actual possession or enjoyment of said property, which bond shall be filed in the office of the county clerk of the proper county: *Provided, further*, that such person shall make a full, verified return of said property to said county judge, and file the same in his office within one year from the death of the decedent, and within that period enter into such securities and renew the same for five years." (Hurd's Statutes Illinois, 1901, p. 1511.)

We respectfully contend that there is a clear distinction, based upon a reasonable and substantial difference, between the class that may be designated as life estates with remainder to the lineal descendants of the beneficiary, and the class which may be designated as life estates with remainder to the collateral heirs of the decedent or stranger in blood; that such difference clearly distinguishes one class from the other and forms a correct basis for the classification made—and the law, operating alike upon all in each class, is not in conflict with the Federal constitution or the constitution of Illinois, but in harmony with both, and valid.

By the general terms of the act in question the privilege of succession to all beneficiaries is taxed, while by express exception the privilege of succession to a life estate by certain enumerated beneficiaries with the remainder to a collateral heir of decedent or stranger in blood is excepted from the operation of the law. The tax complained of is imposed by virtue of the general terms of the law, and objected to because beneficiaries of another, or as is contended the same, class are excepted. The exception is the only part of the Act that can be complained of, and, if that is held to be inconsistent with the limitations of the constitution, that part only must fall, leaving all within the operation of the law, and the judgment of the Supreme Court of Illinois to be affirmed.

The constitutionality of the Act in question and its various provisions, including the one involved herein, has been heretofore elaborately argued before and carefully considered and fully sustained by this honorable Court, and is not open to review in this case.

I.

The sovereign power of the state to impose a tax upon the privilege granted by it to its citizens to succeed to the property of a decedent and the right to classify in reference to the amount of tax imposed or the exemptions therefrom are questions no longer subject to debate and there remains to be discussed the single question presented by the record as to the propriety of this classification made by the act of the general assembly of the state of Illinois.

The act in question has excluded from its operation life estates or estates for a term of years to the mother, father, husband, wife, brother and sister, the widow of the son, or a lineal descendant of the testator where the remainder goes to the collateral heir of the decedent or to a stranger in blood, leaving within the operation of the law and subject to the tax imposed thereby upon the privilege of succession to a life estate, by, in the case at bar, a son and grandson of testator, with the remainders to, as is construed by counsel for plaintiffs in error, the children of such son and grandson.

That those beneficiaries of the testator who are by the act excluded from its operation are in a class which is clearly distinguished from all others by recognized and substantial differences existing between them is easily seen.

Counsel for plaintiffs in error have urged that the right to succeed to a life estate is the same in all cases, that all life estates are of the same class, and base their argument in support of this contention upon the pecuniary value of such life estates to the beneficiaries. Bearing in mind that the tax is not one on property, but one on the right to transmit and inherit, it is readily seen that the question of the actual pecuniary value solely to the beneficiary himself, is not material to the discussion of this question, nor to a consideration of the law, except for the purpose of determining the amount of tax to be assessed. The right of succession enjoyed by different persons to estates of the same pecuniary value may be differently taxed, provided that each belonged to a different class. It will be conceded by the distinguished counsel for plaintiffs in error that the legislature may impose one tax upon the right of succession by a lineal descendant to a certain

inheritance, a different tax upon the right of succession by a collateral heir to the same, and a still different tax upon the right of succession by a stranger in blood to a like inheritance. Indeed, under the act in question the succession by a lineal descendant to a bequest of $20,000 is exempted, while the succession to a like amount by a collateral is taxed $400, and the succession to the same amount by a stranger in blood is taxed $800, and the propriety of this classification by the law is not and cannot be questioned. So that the argument of counsel for plaintiffs in error that the act in question invades the constitutional limitation as to equality and uniformity within the same class, because the pecuniary benefit to their clients, who are taxed upon their right of succession, while some others under the law who receive the same pecuniary benefit are exempted, is erroneous, because they have not applied the proper test to determine whether or not plaintiffs in error are discriminated against as compared with others of the same class. The classification may be as to the amount of the inheritance received. It may be based upon the relationship of the beneficiaries

to the testator. It may be based upon any reasonable and substantial difference which distinguishes those falling in one class under the law from those in the other. In the case at bar plaintiffs in error are lineal descendants of decedent and succeed to life estates with remainder to their children. They do not belong to the same class as a beneficiary who succeeds to a life estate with the remainder to the collateral heir of the decedent or to a stranger in blood, for the reason that they do not take under the same conditions, the one taking for life with the condition that the fee shall pass on in his lineal line, and the other taking for life with the condition that the fee upon his death passes out of the lineal line and to another. In the one case his succession to the life estate preserves both the life estate and the remainder in his lineal line of descent so that upon his death the estate passes in fee to his children, while in the other he reserves in the lineal line a bare life estate which is extinguished by his death, leaving nothing of the estate to pass to his children or lineal heirs. The class to which plaintiffs belong and the class exempted by the act are further distinguished by reason of the fact

that they do not succeed to a privilege to the same extent, as contended for by counsel.

In the case at bar it is clearly seen that the son succeeded to a privilege far greater in extent than he would had the testator provided that the remainder should upon his death go to a stranger in blood. In the present case the son has the privilege of succeeding to the life estate with the additional consideration that by such succession he retains in himself and in his line both the life estate and the remainder. Or he may avail himself of the privilege granted to him of renouncing the life estate or of immediately transferring it to his children and thus immediately vesting in his children both the life estate carved out by the testator and the remainder, being the whole estate.

The inheritance tax is imposed upon the right of the devolution of property and this includes the right in the testator to transmit the property, as well as the right of the legatee to receive it.

The Statute has classified beneficiaries and has provided different rates of taxation upon the right of succession of property to different

classes of relations and to strangers in blood, the highest rate being applied when the transmission is to the stranger in blood.

The statute says in effect to the testator, you may transmit your property to your mother, father, widow, brother, sister, child or lineal descendant for life or for a term of years with remainder to your lineal descendants and for this privilege, your estate shall pay a tax based upon the value of the life estate or estate for years and upon the value of the remainder. If, however, you devise your estate for life or a term of years to the same class of persons with remainder to your collateral heirs or to strangers in blood, the remainder will be taxed at a higher rate than the remainder is taxed under the first case supposed; this remainder being taxed at such higher rate will be held to be a sufficient tax upon the right of disposition of your property and no tax will be computed upon the value of the life estate so devised. This classification seems to be reasonable and we submit to the court that it is one that the legislature had the right to make and that it is not in conflict with any provision of the State or Federal Constitution.

The contention of counsel for plaintiffs in error that the construction placed upon this law by the Supreme Court of Illinois will work a hardship upon the plaintiffs in error as against other life tenants where the remainder is to callateral heirs or strangers is without force as these plaintiffs in error have no interest in or right to the bequest made until the tax is paid.

Property was devised to the United States Government and payment of the inheritance tax was resisted on the ground that the property of the United States could not be taxed by the States.

This Court said—

> "This case raises the simple question whether property bequeathed to the United States is subject to an inheritance tax under the laws of New York."

The Court discussed the question at length and said—

> "Certainly, if it be true that the right of testamentary disposition is properly statutory, the State has a right to require a contribution to the public treasury before the bequest shall take effect. Thus the tax

is not upon the property in the ordinary sense of the term but upon the right to dispose of it and it is not until it has exhausted its contribution to the State that it becomes the property of the legatee."

United States vs. *Perkins*, 163, U. S., 625.

In the same case the Court quote from *State* vs. *Dalrymple*, 70 Maryland, 924—

"This, therefore, is not a tax upon the property itself but is merely the price exacted by the State for the privilege accorded in permitting property so situated to be transferred by will or descent or distribution."

Other cases to the same effect are also there cited and the Court say further—

"We think it follows from this that the act in question is not open to the objection that it is an attempt to tax the property of the United States, since the tax is imposed upon the legacy before it reaches the hands of the Government. The legacy becomes the property of the United States only after it has suffered a diminution to the amount of the tax and it is only upon this condition that the legislature assents to a bequest of it."

So also it is a fixed law that a State has not the power to tax obligations of the United States. Where a life estate in United States bonds was devised and an inheritance tax was assessed thereon, it was contended that the tax was unauthorized because the bonds were exempt from taxation.

The question was before this court in the case of *Plummer* vs. *Coler*, 178 U. S., 115, and after citing various cases in the State courts and in this court holding that the inheritance tax is one on franchise or on the right of succession and not on the property and holding that the inheritance tax is lawful and may be imposed even though the property devised be United States bonds, the Court said—

> "We may regard it as established that the relation of the individual citizen and resident to the State is such that his right, as the owner of property, to direct its descent by by will or by permitting its descent to be regulated by the statute, and his right, as legatee, devisee or heir, to receive the property of his testator or ancestor are rights derived from and regulated by the State and we are unable to perceive any such distinction that can be drawn between the power of the State in imposing taxes upon

franchises of corporations, composed of individual persons, and in imposing taxes upon the right or privilege of individuals to avail themselves of the right to grant and to receive property under statutes regulating the descent of the property of decedents."

Again the Court say—

"For, after all, what is an inheritance tax but a debt exacted by the State for protection afforded during the lifetime of the decedent? It is often impracticable to secure from living persons their fair share of contribution to maintain the administration of the State, and such laws seem intended to enable it to secure payment from the estate of the citizen when his final account is settled with the State. Nor can it be readily supposed that such obligations can be evaded or defeated by the particular form in which the property of the decedent was invested."

The Court held that the inheritance tax was not defeated by reason of the fact, that the property consisted of United States bonds.

The Court then quoted from *State* vs. *Dalrymple*, *supra*—

"That the tax is not a tax upon the property itself, but upon its transmission

by will or by descent, is also held both in New York and in several other States, *Matter of the Estate of Swift*, 137 N. Y., 77, in which it is said that the 'effect of this special tax is to take from the property a portion, or percentage of it. for the use of the State, and I think it quite immaterial whether the tax can be precisely classified with a taxation of property or not. It is not a tax on persons.'

Matter of Hoffman, 143 N. Y., 237.
Schoolfeld's Executor vs. *Lynchburg*, 78 Virginia, 366.
Strode vs. *Commonwealth*, 52 Penn., St., 181.
In *re Cullum* 145 N. Y., 593.

In this last case, as well as in *Wallace* vs. *Myers*, 38 Fed. Rep., 184, it was held that, although the property of the decedent included United States bonds, the taxes might be assessed upon the basis of their value, because the tax was not imposed upon the bonds themselves, but upon the estate of the decedent, or the privilege of acquiring property by inheritance.

Eyre vs. *Jacob*, 14 Grattan, 422.
Dos Passos on Inheritance Tax Law, Chap. 2, and cases cited.

"Such a tax was also held by this Court to be free from any constitutional objec-

tion in *Mager* vs. *Grima*, 8 How.. 490, Mr. Chief Justice Taney remarking that 'the law in question is nothing more than the exercise of the power which every State and sovereignty possess, of regulating the manner and terms under which property, real and personal, within its dominion may be transferred by last will or testament, or by inheritance and of prescribing who shall and who shall not be capable of taking it If a State may deny the privilege altogether, it follows that when it grants it, it may annex to the grant any conditions which it supposses to be required by its interests or policy.' To the same effect is *United States* vs. *Fox*, 94 U. S., 315.

"We think it follows from this that the act in question is not open to the objection that it is an attempt to tax the property of the United States, since the tax is imposed upon the legacy before it reaches the hands of the government. The legacy becomes the property of the United States only after it has suffered a diminution to the amount of the tax, and it is only upon this condition that the legislature assents to a bequest of it"

And said—

"One of the propositions recognized in that case applicable to the present one is

> that a state tax that would be invalid if imposed directly on a legacy to the United States, may be valid if the amount of the tax is taken out of the legacy before it reaches the hands of the government—the theory of such a view apparently being that the property rights of the government do not attach until after the tax has been paid, or until the condition imposed by the tax law of the State has been complied with. Such is also the case in respect to the legacy to Ella Plummer Brown, as the statute in question distinctly makes it the duty of the executor to pay the amount of the tax before the legacy passes to the legatee."

The Court also held that a tax imposed against corporations of another State upon the capital employed in the State of New York was not obnoxious because of the fact that such capital consisted of imported goods in original packages.

New York vs. *Roberts*, 171 U. S., 658.

In that case the Court also cited approvingly the case of *Magoun* vs. *Illinois Trust and Savings Bank*, *supra*, and concluded that the fact that property devised consists in Federal securities does not invalidate the tax or render inapplicable the law under which it is imposed.

It follows from these and other cases that plaintiffs in error have no right to the legacy before the inheritance tax is paid, which entitles them to complain of the tax as against the State. They have no title until the tax is paid. The tax is not imposed upon their property nor upon them, but upon the right of their testator to devise the estate and the classification seems to be one which might be made and within the holdings of this Court in *Magoun* vs. *Illinois Trust and Savings Bank* and other cases.

The Supreme Court of Illinois, in the case at bar, (189 Ill. page of opinion 481; record 104), in its consideration of the question presented to this Court said:

> "Counsel on both sides seem to agree that, subject to the widow's dower, and after her award and one-third of the property were set off to her, Cornelius K. G. Billings was entitled to and took two thirds of the estate for life and Albert M. Billings Ruddock one-third for life, and the only point made on the appeal by these appellants is, that under the statute these life estates, which were so adjudged and held by the Court below to be liable to the tax, were not under the statute,

liable at all. It is not denied that by section 1, standing alone, above quoted, they would be liable, but it is claimed that by section 2 they are excluded from the provisions of section 1. Section 2, or so much of it as affects this question, is as follows: 'When any person shall bequeath or devise any property or interest therein or income therefrom to mother, father, husband, wife, brother and sister, the widow of the son or a lineal descendant during the life or for a term of years or remainder to the collateral heir of the decedent, or to the stranger in blood or to the body politic or corporate at their decease, or upon the expiration of such term, the said life estate or estates for a term of years shall not be subject to any tax and the property so passing shall be appraised immediately after the death at what was the fair market value thereof at the time of the death of the decedent in the manner hereinafter provided, and after deducting therefrom the value of said life estate, or term of years, the tax transcribed by this act on the remainder shall be immediately due and payable to the treasurer of the proper county, and, together with the interest thereon, shall be and remain a lien on said property until the same is paid.'

"The point made is, that by the express terms of this section all life estates are exempted from the tax imposed by section 1,

whether the remainder be to lineals or collaterals. But we have held that the proper reading of the clause, 'or remainder to the collateral heir,' etc., should be read, *and remainder*, etc., (*Ayers* vs. *Chicago Title and Trust Co.*, 187 Ill., 42), and that the meaning of that provision is, that when the bequest is to the mother, father, husband, wife, brother and sister, widow of the son, or a lineal descendant, during the life or for a term of years, *and* remainder to the collateral heir of the decedent or to the stranger in blood, etc., such estate for life or for a term of years shall not be subject to any tax, but that where the remainder is to lineals the prior estate would, under section 1, be subject to the tax.

"But it is contended that this construction renders the statute unconstitutional, under both the State and the Federal Constitutions; that it violates Section 2 of Article 2, of the Constitution of this State, which provides that 'no persons shall be deprived of life, liberty or property without due process of law,' and Section 1 of Article 9, because the law imposing the tax is not 'uniform as to the class upon which it operates,' and the First Section of the Fourteenth Amendment to the Constitution of the United States, which provides 'that no *state* shall deprive any person of life, liberty or property without due process of law, nor deny to any person within its juris-

diction the equal protection of the law.' The constitutionality of the statute has been established by the decisions of several cases—

Kochersperger vs. *Drake*, 167 Ill., 122;
Ayers vs. *Chicago Title and Trust Co.*, *supra*;
Magoun vs. *Illinois Trust and Savings Bank*, 170 U. S., 283,

and we shall consider only the question whether, by the classification made there was any arbitrary or unwarranted discrimination between life tenants by the statute imposing the tax.

"It is said that the statute discriminates between life tenants with remainder to lineal descendants and life tenants with remainder to collateral heirs, by imposing the tax on the first and excluding the second from its operation. But we cannot see that this is a mere arbitrary exaction from one class while another class, which cannot be differentiated from it, is allowed to go untaxed. A life estate with the fee descending in the lineal line might well be more desirable than a life estate with remainder to collateral heirs or strangers to the blood. At any rate, there is a sufficient difference upon which the legislature could, without transcending its power, base a classification. It may be observed that as to the rate of tax to be imposed and the

amount of the exemption the beneficiaries are divided by the First Section into three classes, which, for purposes of designation, may be called—first, the lineals; second, the collaterals; and third, the strangers to the blood. It is not questioned in this case that the differences in relationship to the decedent have been properly used by the legislature as a just and legal basis for purposes of classification, and although the constitutionality of the statute has heretofore been attacked because of such classification, it has been sustained by this Court and by the Supreme Court of the United States.

Kochersperger vs. *Drake*, 167 Ill., 122.
Magoun vs. *Illinois Trust and Savings Bank*, 170 U. S., 283.

"Now, to exempt, by the second section, beneficiaries of the first class who are given only a life estate with remainder over to beneficiaries of the second or third class, is to apply the same principle of discrimination in favor of those standing nearest in relationship to the deceased owner. No life tenant falling within the second or third class is exempt, and the mere fact that life tenants of the first class, where the remainder is kept in the lineal line, are not included in the exemption does not render the statute unconstitutional for lack of uniformity as to the class upon which

it operates, as supposed by counsel. Section 2 does not interfere with the classification made by Section 1, but recognizes it, and excludes only from the operation of that section life tenants who are beneficiaries of the first class where the remainder is given to those of the second or third class—that is, to collateral heirs or strangers to the blood, or the body politic or corporate. It cannot be said, we think, that no reason whatever appears for the distinction made by this exemption. It may be regarded as a concession—a further exemption—to beneficiaries of the first class who are the last of their line to hold and enjoy the property; and even if it were one which the legislature had no power to make, that provision only would be void, leaving the rest of the act in full force. And such a construction would not affect the order of court appealed from nor aid appellants in their contention."

It is thus seen, as is so clearly pointed out by the Illinois Supreme Court, that the classification here complained of is not only based upon a reasonable ground and is clearly distinguished dy substantial differences from the other class, but that this classification made in Section 2 of the act, in which fall those exempted from the operation of the law, is in

harmony with the plan and theory of the law as a whole.

This court in its consideration of the act in question, in the case of

Magoun vs. *Illinois Trust and Savings Bank*, 170 U. S., 283, page of opinion 292, said:

"This brings us to the law in controversy. The appellant attacks both its principles and its provisions—its principles as necessarily arbitrary and its provisions as causing discriminations and creating inequality in the burden of taxation.

"Is the act open to this criticism? The clause of the fourteenth amendment especially invoked is that which prohibits a state denying to any citizen the equal protection of the laws. What satisfies this equality has not been and probably never can be precisely defined. Generally it has been said that it 'only requires the same means and methods to be applied impartially to all the constituents of a class so that the law shall operate equally and uniformly upon all persons in similar circumstances.'

Kentucky Railroad Tax Cases, 115 U. S., 321-337.

"It does not prohibit legislation which is limited, either in the objects to which it is directed or by the territory within which

it is to operate. It merely requires that all persons subjected to such legislation shall be treated alike under like circumstances and conditions, both in the privilege conferred and the liabilities imposed.

Hayes vs. *Missouri*, 120 U. S., 68.

"Similar citations could be multiplied. But what is the test of likeness and unlikeness of circumstances and conditions? These expressions have almost the generality of the principle they are used to expound, and yet they are definite steps to precision and usefulness of definition, when connected with the facts of the cases in which they are employed. With these for illustrations it may be safely said that the rule prescribes no rigid equality and permits to the discretion and wisdom of the state a wide latitude as far as interference by this court is concerned. Nor with the impolicy of the law has it concern.

MR. JUSTICE FIELD said in—

Mobile County vs. *Kimball*, 102 U. S., 691,

that this court is not a harbor in which can be found a refuge from ill-advised, unequal and oppressive state legislation. And he observed in another case: 'It is hardly necessary to say that hardship, impolicy or injustice of state laws is not necessarily an objection to their constitutional validity.'

"The rule, therefore, is not a substitute for municipal law; it only prescribes that

that law have the attribute of equality of operation, and equality of operation does not mean indiscriminate operations on persons merely as such, but on persons according to their relations. In some circumstances it may not tax A more than B, but if A be of a different trade or profession than B, it may. And in matters not of taxation, if A be a different kind of corporation than B, it may subject A to a different rule of responsibility to servants than B, *Missouri Pacific Ry. Co.* vs. *Mackey*, 127 U. S., 205, to a different measure of damages than B, *Minneapolis and St. Louis Railway Co.* vs. *Beckwith*, 129 U. S., 26, and it permits special legislation in all its varieties.

Missouri Pacific Ry. Co. vs. *Mackey*, 127 U. S., 205.

Minneapolis and St. Louis Ry. Co. vs. *Herrick*, *id.* 210.

Duncan vs. *Missouri*, 152 U. S., 377.

"In other words, the State may distinguish, select and classify objects of legislation, and necessarily this power must have a wide range of discretion. It is not without limitation, of course. 'Clear and hostile discriminations against particular persons and classes, especially such as are of an unusual character, unknown to the practice of our governments, might be obnoxious to the constitutional prohibition,' said Mr. Justice Bradley, in *Bell's Gap Rd. Co.* vs. *Pennsylvania*, 134 U. S., 232-237.

"And Mr. Justice Brewer; in *Gulf, Colorado and Santa Fe Railroad* vs. *Ellis*, 165 U. S., 150-165, after a careful consideration of many cases, said: 'It is apparent that the mere fact of classification is not sufficient to relieve a statute from the reach of the equality clause of the Fourteenth Amendment, and in all cases it must appear not only that a classification has been made, but also that it is one based upon some reasonable ground—some difference which bears a just and proper relation to the attempted classification—and is not a mere arbitrary selection.'

"Two principles, therefore, must be reconciled in the Illinois Inheritance Law if it is to be sustained, the equality of protection of the laws guaranteed by the Fourteenth Amendment, and the power of the State to classify persons and property. The latter principle needs further consideration. What test is there of the reasonableness of a classification—of one based upon 'some difference which bears a just and proper relation to the attempted classification—and is not a mere arbitrary selection?' Legislation special in character is not forbidden by it, as we have seen. Treating mechanics as a class and giving them a lien for the amount of their work has been held reasonable. Charging a railroad corporation and not other corporations or persons with an attorney's fee has been held unreasonable, yet the former would seem to

be as much an exclusive favor as the latter an exclusive burden.

"Of taxation, and the case at bar is of taxation, Mr. Justice Bradley said in *Bell's Gap Rd. Co.* vs. *Pennsylvania*, 134 U. S., 232, and Mr. Chief Justice Fuller, in *Giozza* vs. *Tiernan*, 148 U. S., 637, that the Fourteenth Amendment was not intended to compel the State to adopt an iron rule of equal taxation. The range of the State's power was expressed by Mr. Justice Bradley, as follows: 'It may, if it chooses, exempt certain classes of property from any taxation at all, such as churches, libraries, and the property of charitable institutions. It may impose different specific taxes upon different trades and professions, and vary the rates of excise upon various products; it may tax real estate and personal property in a different manner; it may tax visible property only and not tax securities for payment of money, it may allow deductions for indebtedness or it may not allow them. All such regulations, and those of like character, so long as they proceed within reasonable limits and general usage, are within the discretion of the State Legislature, or the people of the State framing their Constitution.'

"And so Mr. Justice MILLER, speaking for the Court in *Davidson* vs. *New Orleans*, 96 U. S., 97, 105, said: 'The Federal constitution imposes no restraints on the State in regard to unequal taxation.'

"The Court, through Mr. Justice LAMAR, in *Pacific Express Co.* vs. *Seibert*, 142 U. S., 339, was equally emphatic. He said on page 351, 'this court has repeatedly laid down the doctrine that diversity of taxation, both with respect to the amount imposed and the various species of property selected either for bearing its burdens or from being exempt from them, is not inconsistent with a perfect uniformity and equality of taxation in the proper sense of those terms; and that a system which imposes the same tax upon every species of property, irrespective of its nature or condition or class, will be destructive of the principles of uniformity and equality in taxation and of a just adaptation of property to its burdens.' And it was said in *Merchants' Bank* vs. *Pennsylvania*, 167 U. S., 461: 'Indeed, this whole argument of a right under the Federal constitution to challenge the tax law on the ground of inequality in the burdens resulting from the operation of the law is put at rest by the decision in *Bell's Gap Rd. Co.* vs. *Pennsylvania*.'

"There is, therefore, no precise application of the rule of reasonableness of classification, and the rule of equality permits many practical inequalities. And necessarily so. In a classification for governmental purposes there cannot be an exact exclusion or inclusion of persons or things. Bearing these considerations in mind, we can solve the questions in controversy."

This comprehensive consideration of the application of the Fourteenth Amendment to the legislative discretion of a state and the foregoing analysis of the adjudicated cases before this distinguished tribunal make superfluous any other quotation from or citation of authorities by us, and we have but to apply the principles thus announced and the construc tions adopted by this court in the cases above reviewed to see that there is a clear distinction, based upon a reasonable and substantial difference, between the class which may be designated as life estates with remainder to the lineal descendants of the beneficiary, and the class which may be designated as life estates with remainder to the collateral heirs of the decedent or to the stranger in blood; that such difference clearly distinguishes one class from the other, and forms a correct basis for the classification made, and the law, operating alike upon all in each class, is not in conflict with the Federal constitution or the constitution of Illinois, but in harmony with both and valid.

This Court in its consideration of the constitutionality of the Illinois inheritance tax law in the

case *supra*, makes application of the rule by it above announced to the provisions of the act in question, and testing those provisions by that rule, page of opinion 300, said:

> "That rule does not require, as we have seen, exact equality of taxation. It only requires that the law imposing it shall operate on all alike under the same circumstances. The tax is not on money; it is on the right to inherit; and hence a condition of inheritance, and it may be graded according to the value of that inheritance. The condition is not arbitrary, because it is determined by that value; it is not unequal in operation because it does not levy the same percentage on every dollar; does not fail to treat all alike under like circumstances and conditions, both in the privilege conferred and the liabilities imposed. The jurisdiction of courts is fixed by amounts. The right of appeal is. As was said at bar, the Congress of the United States has classified the right of suitors to come into the United States courts by amounts. Regarding these alone, there is the same inequality that is urged against classification of the Illinois law. All license laws and all specific taxes have in them an element of inequality, nevertheless they are universally imposed and their legality has never been questioned. We think the classification of the Illinois law

was in the power of the legislature to make, and the decree of the Circuit Court is affirmed."

II.

The constitutionality of the inheritance tax law of Illinois is challenged by counsel for plaintiffs in error, not because the legislature has by this act imposed upon plaintiffs in error a tax upon their successions to the estates left them by testator, but because it has excepted from the operations of the law persons enjoying privileges of succession who belong to another or, as counsel assert, the same, class.

It is a principle of law universally recognized by this and all the courts and particularly adhered to by the Supreme Court of Illinois that the provisions of the law which grant exemption from taxation shall be strictly construed and if any provision attempting an exception is inconsistent with the law as a whole it must fall.

By the inheritance tax law of Illinois it is seen that the law in general terms provides that a tax is imposed upon all enjoying the privilege of succession to an inheritance and that by a special express exception to this gen-

eral provision of the law life estates or estates for a term of years to a mother, father, husband, wife, brother and sister, the widow of the son, or a lineal descendant, with the remainder to a collateral heir of the decedent or stranger in blood, is, among certain other specified bequests, exempted from the operation of the law. In the construction of this law to determine the force and effect of each of its provisions the whole law must be read and considered together. And in doing so in this case we find that by the general terms of the law a tax upon the privilege of succession would fall upon all were it not for the express exemption taking the class complained of by counsel for plaintiffs in error out of the operation of the law. This is manifest from an examination of the act. This, then, being true, it is likewise apparent that the objection of counsel for plaintiffs in error cannot be directed against the law which imposes a tax upon the privileges enjoyed by plaintiffs to succeed to the inheritances left them by testator, but can only be directed against the *exemption* in favor of those who are by the express exception to the law taken out of its

operation. It follows, thus, then plaintiffs in error are not harmed by the provisions of the law or by its application to them, and the tax imposed being supported by authority of the law the judgment of the Supreme Court of Illinois should be affirmed

The Court, in considering this case, upon this point (record 106) said:

> "It cannot be said, we think, that no reason whatever appears for the distinction made by this exemption; it may be recorded as a concession—a further exemption—to beneficiaries of the first class who are the last of their line to hold and enjoy the property; *and even if it were one which the legislarure haa no power to make that provision only would be void, leaving the rest of the act in full force; and such a construction would not affect the order of the Court appealed from nor aid appellants in their contention.*"

III.

We respectfully and earnestly contend that the constitutionality of the Illinois inheritance tax law with its various provisions, including the one assailed herein, has been heretofore elaborately argued before and carefully considered and fully sustained by this honorable Court and is not now open to review in this case.

In the case of—

Drake vs. *Kochersberger*, 167 Ill., 122,

the constitutionality of the Illinois inheritance tax law was carefully reviewed and sustained by the Supreme Court of Illinois, and this Court in the case of—

Magoun vs. *Illinois Trust and Savings Bank*, 170 U. S., 283,

as has been stated, fully considered all of the provisions of this law as tested by the Fourteenth Amendment to the constitution of the United States and likewise sustained the same in all of its parts. This last case was brought to this court and decided subsequent to the death of the testator in the case at bar.

In the original brief filed on behalf of counsel for plaintiffs in error in the case of *Magoun* vs. *Illinois Trust and Savings Bank*, *supra*, the constitutionality of the Illinois inheritance tax law was challenged upon the specific ground, among others, that the exemption as provided in section 2 of the act, which is the one and the only one advanced in the case at bar, operated to discriminate in

favor of some and against others of the same class.

Counsel there stated, page 8, original brief, the issue to be—

> "The point of constitutional law to be decided is whether or not, under the Fourteenth Amendment, the States can levy graduated or progressive taxes upon persons, property or privileges arbitrarily classified solely according to the amount or value of the property or privilege taxed, and whether or not exemptions of legacies as large as twenty thousand dollars, *and of estates for life and years, no matter how large or valuable, can be sustained.*"

An examination, in fact, of the original brief filed by counsel for plaintiffs in error in that case shows that this particular objection urged to the constitutionality of the law in the case at bar was there quite as fully argued and as earnestly insisted upon as here. (Brief and argument plaintiffs in error, pp. 7, 8, 59, 60, 68: *Magoun* vs. *Illinois Trust and Savings Bank*, *supra.*) And in the argument at bar made by one of the distinguished counsel on behalf of the plaintiffs in error in that case, who likewise appears in this, which oral argument was, by

leave of Court granted upon his motion, printed and filed and made a part of the record of the case, the exemption here complained of and provided by the exception to the general provision of the law in section 2 of the act, was specifically called to the attention of the Court and earnestly urged as one of the most objectionable provisions of the law and which should because of this feature be declared unconstitutional. (Oral argument by Mr. Guthrie, pp. 7, 8, 9, 26, 28, 30) And in the argument at bar by Mr. Harrison for plaintiffs in error in that case, likewise printed and filed of record the question as to whether or not the exemption provided by section 2 of the act in favor of life estates with remainder to collateral heirs of the decedent or strangers in blood invalidated the act, as earnestly urged then in that case as now in this, was pressed to the attention of this Court by that distinguished lawyer. (Argument of Mr. Harrison, pp. 57 and 58). And this Court, in its disposition of that case, while not specifically analyzing all of the objections urged against the law by counsel for plaintiffs in error, nevertheless, upon consideration of all the arguments made for and against the act

and the principles of law applicable thereto, held, on page of opinion 299:

> "Nor do the exemptions of the statute render its operation unequal within the meaning of the Fourteenth Amendment."

We submit to this honorable Court that not only is the judgment of the Supreme Court of the State of Illinois correct and in harmony with the requirements of the Fourteenth Amendment, and in harmony with the decisions of this Court, but that the very question here at issue was decided by this court in the case of *Magoun* vs. *Illinois Trust and Savings Bank* upon this very law and we respectfully ask that the judgment of the Supreme Court of Illinois be affirmed.

HOWLAND J. HAMLIN,
Attorney General of Illinois.

Supreme Court of the United States.

No. 106.—October Term, 1902.

Cornelius K. G. Billings and Albert M. Billings Ruddock, Plaintiffs in Error, *vs.* The People of the State of Illinois. | In error to the Supreme Court of the State of Illinois.

[January 19, 1903.]

Mr. Justice McKenna delivered the opinion of the Court.

The case presents the question of the constitutionality, under the Fourteenth Amendment of the Constitution of the United States, of section 2 of the Inheritance tax law of the State of Illinois. The constitutionality of the law was passed upon in *Magoun* v. *Illinois Trust & Savings Bank*, (170 U. S. 283,) and is there set out. As much of section 2 as is necessary to quote is as follows:

"Sec. 2. When any person shall bequeath or devise any property or interest therein or income therefrom to mother, father, husband, wife, brother and sister, the widow of the son, or a lineal descendant during the life or for a term of years or (and) remainder to the collateral heir of the decedent, or to the stranger in blood or to the body politic or corporate at their decease, or on the expiration of such term, the said life estate or estates for a term of years shall not be subject to any tax and the property so passing shall be appraised immediately after the death at what was the fair market value thereof at the time of the death of the decedent in the manner hereinafter provided, and after deducting therefrom the value of said life estate, or term of years, the tax transcribed by this act on the remainder shall be immediately due and payable to the treasurer of the proper county, and, together with the interests thereon, shall be and remain a lien on said property until the same is paid; . . ."

It is claimed, however, that the question presented in this case was not passed upon in *Magoun* v. *Illinois Trust & Savings Bank*. If this be not so, if this case cannot be distinguished from that, it follows necessarily that the judgment sought to be reviewed must be affirmed.

The proceedings originated in the County Court of Cook County, Illinois, which entered a judgment order assessing taxes, under the law in controversy, upon the property and estates passing to the plaintiffs in error. The order was affirmed by the Supreme Court of the State. (.)

Albert M. Billings, a resident of Chicago, died in that city, February 7, 1897. He left surviving him a widow, Augusta S. Billings; a son, Cornelius K. G. Billings, one of the plaintiffs in error, and grandson, Albert

M. Billings Ruddock, who is the other plaintiff in error. He also left a son by a former marriage, with whom this record is not concerned. His estate was very large, and he devised and bequeathed it all to his wife, excepting certain reservations, during her natural life. How it should be divided, then, the will proceeded to provide as follows:

"I do also herein give and bequeath to my son Cornelius Kingsley Garrison Billings, and to my grandson Albert M. Billings Ruddock, to be held and owned by them at the death of my wife Augusta S. Billings as is hereinafter explained and set forth, all the property and estate herein bequeathed to her my wife not otherwise disposed of by my said executors hereinafter named, in the manner following to wit: Two-thirds thereof to my son C. K. G. Billings and one-third thereof to my grandson Albert M. Billings Ruddock to be held and owned by them as above stated during their lifetime, and should my son C. K. G. Billings die, not leaving a living child or children of his own issue, the property herein bequeathed to him shall revert and be held and owned by my grandchild Albert M. Billings Ruddock during his lifetime, and should my grandson Albert M. Billings Ruddock die not leaving a child or children of his own issue, then all the property and estate herein bequeathed to him shall revert and become the property and estate of my brother John D. Billings (should he be alive at that time) and my living nephews and nieces who shall be living at the time of the death of my said grandson, as aforesaid, said brother, nieces and nephews to share and share alike in said estate."

The will, therefore, created a life estate in the widow in the entire estate, and at her death life estates of two-thirds and one-third of the property bequeathed respectively to the testator's son and grandson, the plaintiffs in error.

The widow renounced the provision made for her, and elected to take in lieu thereof her dower and legal share, and the estates to the plaintiffs in error accrued at once. The county court appointed an appraiser to fix the fair market value of the estates for the purpose of assessing the inheritance tax as provided by the statute. "The widow's dower award," to quote from the opinion of the Supreme Court, "and one-third of the personalty were appraised at the total sum of $2,363,151.75, the tax upon which, after deducting the $20,000 exemption, was fixed at $23,443.53. The life interest (as it was decreed to be) of said Cornelius in the two-thirds bequeathed to him was appraised at $2,472,118.75, and after deducting his exemption of $20,000, the tax to be paid by him was assessed at $24,821.18. This included the specific devise of real estate valued at $30,000. The life interest of Albert M. Billings Ruddock in the one-third interest bequeathed to him was appraised at $1,408,374.77, and after deducting his exemption of $20,000, his tax was assessed at $14,043.74. This included also the tax on a specific devise to him of real estate valued at $16,000. The court, in approving the appraiser's report, found that Cornelius K. G. Billings took a life estate in the two-thirds of the residuary estate bequeathed to him, and that there was a remainder therein of the value, at

the testator's death, of $864,584.70, which had not vested, and that there was a remainder in the one-third bequeathed to Albert M. Billings Ruddock for life of the value of $250,976.95, which had not vested, and ordered that the tax on these remainders be postponed until they shall have become vested."

The widow was an appellant in the Supreme Court of the State, but she is not a party here.

The assignment of error is "that the statute is in contravention of the Fourteenth Amendment to the Constitution of the United States of America, in that the classification of life tenants is arbitrary and unreasonable, and denies to the plaintiffs in error, as life tenants, the equal protection of the laws; because the statute, as interpreted and enforced by the State courts, taxes life estates where the remainder is to lineals, but does not tax, and expressly exempts, similar life estates where the remainder is to collaterals or to strangers in blood."

Turning to the Magoun case, we find that the objection made to the statute was that it denied to the appellant the equal protection of the laws, and the somewhat elementary and lengthy discussion in the opinion was induced by the grounds upon which and the ability with which, the statute was attacked. It is very certain that no consideration was omitted from the arguments at bar which could have aided the court to form a judgment. If there had been a proper classification there could not have been the denial of the equal protection of the laws, and we, therefore, expressed and illustrated the principle upon which it should be based. We said it was established by cases; that classification must be based on some reasonable ground. It could not be a "mere arbitrary selection." But what is the test of an arbitrary selection? It is difficult to exhibit it precisely in a general rule. Classification is essentially the same in law as it is in other departments of knowledge or practice. It is the grouping of things in speculation or practice, because they "agree with one another in certain particulars and differ from other things in those same particulars." Things may have very diverse qualities, and yet be united in a class. They may have very similar qualities, and yet be cast in different classes. Cattle and horses may be considered in a class for some purposes. Their differences are certainly pronounced. Salt and sugar may be associated in a grocer's stock for a grocer's purposes. To confound them in use would be very disappointing. Human beings are essentially alike, yet some individuals may have attributes or relations not possessed by others, which may constitute them a class. But their classification—indeed, all classification—must primarily depend upon purpose—the problem presented. Science will have one purpose, business another and legislation still another. The latter, of course, on account of the restraints upon the legislature, may not be legal—may not be within the power of the legislature.

To dispute that power, however, is not the same thing as to dispute a classification, and yet that there may be dependence—more freedom of classification in some instances, has been indicated by the cases. A State cannot regulate interstate commerce, however accurate its classification of objects may be. On the other hand, the taxing power of a State is one of its most extensive powers. It cannot be exercised upon persons grouped according to their complexions. It can be exercised if they are grouped according to their occupations. A State may regulate or suppress combinations to restrict the sale of products. The power cannot be exerted to forbid combinations among those who buy products and permit combinations among those who raise or grow products. (184 U. S. 540.) And yet, exercising its taxing power, it has been decided, that a State may make that discrimination. (179 U. S. 89.) Other illustrations may be taken from the cases which tend to the same end. If the purpose is within the legal powers of the legislature, and the classification made has relation to that purpose, (excludes no persons or objects that are affected by the purpose, includes all that are,) logically speaking, it will be appropriate; legally speaking, a law based upon it will have equality of operation. And, excluding our right to consider policies or assume legislation, we have many times said that a State in its purposes and in the execution of them, must be allowed a wide range of discretion, and that this court will not make itself "a harbor in which can be found a refuge from ill-advised, unequal and oppressive legislation." (102 U. S. 691.)

These principles were announced in the Magoun case and found to sustain the Illinois statute. We said: "There are three main classes in the Illinois statute, the first and second being based, respectively, on lineal and collateral relationship to the testator or intestate, and the third being composed of strangers to his blood and distant relatives. The latter is again divided into four subclasses dependent upon the amount of the estate received. The first two classes, therefore, depend upon substantial differences, differences which may distinguish them from each other, and them or either of them from the other class—differences, therefore, which bear a just and proper relation to the attempted classifications the rule expressed in the *Gulf, Colorado & Santa Fe Railroad Co* v. *Ellis, supra.* And if the constituents of each class are affected alike, the rule of equality prescribed by the cases is satisfied. In other words, the law operates 'equally and uniformly upon all persons in similar circumstances.'"

But it is insisted that the classification sustained in the Magoun case "related solely to the graduated feature of the tax." In the case at bar, it is said, the question is "whether or not the Illinois legislature can discriminate against *constituents of a certain class*, and apply different rules for the taxation of its members. Life tenants constitute but a single class, and the incidents of such an estate, the source thereof, the extent, the

dominion over and quality of interest in the tenant, is the same irrespective of the ultimate vesting of the remainder. The tax is not upon the property, but is upon the person succeeding to the property."

Undoubtedly, life tenants regarded simply as persons, may be in legal contemplation the same; estates for life regarded simply as estates with their attributes also in legal contemplation, may be said to be the same, but that is not all that is to be considered, nor is it determinative. We must regard the power of the State over testate and intestate dispositions of property, its power to create and limit estates, and, as resulting, its power to impose conditions upon their transfer or devolution. It is upon this power that inheritance tax laws are based, and we said, in the Magoun case, that the power could be exercised by distinguishing between the lineal and collateral relatives of a testator. There the amount of tax depended upon him who immediately received; here the existence of the tax depends upon him who ultimately receives. That can make no difference with the power of the State. No discrimination being exercised in the creation of the class, equality is observed. Crossing the lines of the classes created by the statute discriminations may be exhibited, but within the classes there is equality.

Judgment affirmed.

True copy.

Test:

Clerk Supreme Court, U. S.